

District of Columbia Code

1981 Edition



Property of the District of Columbia Government



DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND
PERMANENT LAWS OF THE UNITED STATES), AS OF
APRIL 27, 1999, AND NOTES
TO DECISIONS THROUGH
MARCH 1, 1999

VOLUME 2

1999 REPLACEMENT

**TITLE 1—ADMINISTRATION
CHAPTERS 1-10A**

Prepared and Published Under Authority of the Council of the District
of Columbia as supervised by the Office of the General Counsel,
Charlotte M. Brookins-Hudson, General Counsel.
Brian K. Flowers, Legislative Counsel.
Benjamin F. Bryant, Jr., Codification Counsel.
Karen R. Westbrook, Codification Assistant.

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OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This
Volume Has Been Prepared

Charlotte M. Brookins-Hudson, *General Counsel*
Brian K. Flowers, *Legislative Counsel*
Benjamin F. Bryant, Jr., *Codification Counsel*
Karen R. Westbrook, *Codification Assistant*



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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

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*Title has been enacted as law.

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Subchapter I. General Provisions.

§ 1-101. Territorial area.

(a) The District of Columbia is that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein.

(b) All of the territory constituting the permanent seat of the government of the United States shall continue to be designated as the District of Columbia. (R.S., D.C., § 1; June 11, 1878, 20 Stat. 102, ch. 180, § 1; 1973 Ed., § 1-101; Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, § 717(a).)

Cross references. — As to creation of Metropolitan Police District of District of Columbia, see § 4-101.

As to National Capital Service Area, see § 9-142.

Section references. — This section is referred to in § 2-2601.

Organic Act of 1878. — See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Boundary line between District of Columbia and Commonwealth of Virginia established. — See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Potomac River part of District. — The entire part of the Potomac River between the District and Virginia shores is a part of the District of Columbia, and as such is subject to all local legislation and police regulations, unless the intent appears to exclude it therefrom. *Jefferson v. District of Columbia*, 40 App. D.C. 381 (1913); *District of Columbia v. Tyrrell*, 41 App. D.C. 463 (1914), cert. dismissed, 243 U.S. 1, 37 S. Ct. 361, 61 L. Ed. 557 (1917); *Herald v.*

United States, 284 F. 927 (D.C. Cir. 1922); *Croson v. District of Columbia*, 2 F.2d 924 (D.C. Cir. 1924).

The boundary between the District and Virginia is, at least, the low-water mark of the Potomac River on the Virginia shore. *Marine Ry. & Coal Co. v. United States*, 257 U.S. 47, 42 S. Ct. 32, 66 L. Ed. 124 (1921).

National Airport not in District. — Washington National Airport is within the boundaries of the Commonwealth of Virginia and not within those of the District of Columbia. *Bryan v. District Unemployment Comp. Bd.*, App. D.C., 342 A.2d 45 (1975).

District originally divided into counties of Alexandria and Washington. — When the government of the United States took possession of the District in 1800, it was divided by Congress into 2 counties, that of Alexandria on the west side of the Potomac, and that of Washington on the east side; and the laws of Virginia governed the former and the laws of Maryland the latter. *Metropolitan R.R. v. District of Columbia*, 132 U.S. 1, 10 S. Ct. 19, 33 L. Ed. 231 (1889).

The County of Washington embraced all that portion of the original District of Columbia

acquired from the State of Maryland and lying north of the Potomac River, a fact of which a court will take judicial knowledge. *Green v. McIntire*, 42 App. D.C. 250 (1914).

Common-law doctrines of accretion and erosion were legislatively overruled by the Acts of 1912 and 1945 insofar as they concern the jurisdiction of the United States District Court to adjudicate title to lands lying along the Alexandria waterfront. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299 (D.C. Cir. 1976), cert. denied, 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536 (1977).

Effect of 1945 Act on jurisdictional

boundary. — The 1945 Act establishing a new boundary between the District of Columbia and Virginia for law enforcement purposes did not establish a jurisdictional boundary between the District of Columbia and Virginia for all purposes. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299 (D.C. Cir. 1976), cert. denied, 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536 (1977); *In re Air Crash Disaster at Wash.*, 559 F. Supp. 333 (D.D.C. 1983).

Cited in *United States v. Eliason*, 41 U.S. (16 Pet.) 291, 10 L. Ed. 968 (1842); *Rhodes v. Bell*, 43 U.S. (2 How.) 397, 11 L. Ed. 314 (1844); *Neale v. Arshad*, App. D.C., 683 A.2d 160 (1996).

§ 1-102. District created body corporate for municipal purposes.

(a) The District is created a government by the name of the “District of Columbia,” by which name it is constituted a body corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code.

(b) The District of Columbia shall remain and continue a body corporate as provided in subsection (a) of this section. Said corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said corporation or the Mayor. (R.S., D.C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1; 1973 Ed., § 1-102; Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, § 717(a).)

Cross references. — As to Mayor being custodian of District’s corporate seal, see § 1-242.

Section references. — This section is referred to in §§ 1-603.1 and 2-2601.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Organic Act of 1878. — See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

The District of Columbia is a municipal corporation. *Randolph v. District of Columbia*, App. D.C., 156 A.2d 686 (1959); *Morrow v. District of Columbia*, 417 F.2d 728 (D.C. Cir. 1969).

District of Columbia may sue and be sued, subject to the ordinary rules that govern the law of procedure between private persons. *Metropolitan R.R. v. District of Columbia*, 132 U.S. 1, 10 S. Ct. 19, 33 L. Ed. 231 (1889).

But this section does not subject the District of Columbia to garnishment. *Chewing v. District of Columbia*, 119 F.2d 459 (D.C. Cir.), cert. denied, 314 U.S. 639, 62 S. Ct. 74, 86 L. Ed. 513, rehearing denied, 314 U.S. 710, 62 S. Ct. 175, 86 L. Ed. 566 (1941).

Money judgment against the District is not authorized in an action to which it is not a party. *Farrell v. Ward*, App. D.C., 53 A.2d 46 (1947).

District responsible for negligence of its officers. — The District of Columbia, as a municipal corporation, is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks. *District of Columbia v. Woodbury*, 136 U.S. 450, 10 S. Ct. 990, 34 L. Ed. 472 (1890).

Respondent superior. — District of Columbia may be sued under the common-law doctrine of respondent superior for intentional torts of its employees acting within scope of their employment. *Wade v. District of Columbia*, App. D.C., 310 A.2d 857 (1973).

The District of Columbia is not immune from suit on the theory of respondent superior for a police officer's alleged intentional torts of assault and battery and false arrest. *Graves v. District of Columbia*, App. D.C., 310 A.2d 857 (1973).

The District of Columbia, under the common-law theory of respondent superior, is liable for the actions of a police inspector who was operating within the scope of his duties. *Tatum v. Morton*, 402 F. Supp. 719 (D.D.C.), *supp. opinion*, 386 F. Supp. 1308 (D.D.C. 1974), modified, 562 F.2d 1279 (D.C. Cir. 1977).

District not liable in absence of negligence. — The District of Columbia is not liable for damage to abutting realty resulting from widening and changing the natural grade of a street, in the absence of negligence in manner in which such work was done. *Bealle v. District of Columbia*, 80 F. Supp. 75 (D.D.C. 1948).

District's municipal immunity is based on the common-law theory of municipal governmental immunity, and is not derived from sovereignty of the United States or limited to same extent as that of the federal government under the Federal Tort Claims Act. *Wade v. District of Columbia*, App. D.C., 310 A.2d 857 (1973).

Discretionary municipal acts immune. — The District of Columbia is immune from suit for the torts of its agents under the doctrine of municipal immunity only if the act complained of was committed in the exercise of a discretionary function, and if the act is committed in the exercise of a ministerial function, the District must respond. *Wade v. District of Columbia*, App. D.C., 310 A.2d 857 (1973).

Common-law governmental immunity to negligent torts in the District of Columbia is conditioned upon their commission in course of a discretionary activity. *Baker v. Washington*, 448 F.2d 1200 (D.C. Cir. 1971).

Inquiry in determining discretionary or ministerial nature of tortious act, for the purpose of determining governmental immunity, is whether the resulting injury can be

subjected to judicial redress without thereby jeopardizing quality and efficiency of government itself. *Baker v. Washington*, 448 F.2d 1200 (D.C. Cir. 1971).

The contention that a case against the sovereign involves the kind of discretionary function that permits the defense of sovereign immunity requires a particularization of the kind of activity involved beyond that available from allegations of ultimate facts. *Graham v. District of Columbia*, 433 F.2d 536 (D.C. Cir. 1970).

Actions held discretionary in nature. — Municipal acts involving the design of streets and control of flow of traffic over them are discretionary in nature and therefore enjoy tort immunity. *District of Columbia v. North Wash. Neighbors, Inc.*, App. D.C., 367 A.2d 143 (1976), cert. denied, 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80 (1977).

Actions held ministerial. — A parole officer's actions in failing to disclose a parolee's prior sex-related convictions to the parolee's potential employers was a "ministerial," not a "discretionary" action, and the District therefore was not shielded by sovereign immunity from liability arising out of the parolee's actions in raping and murdering a woman in the apartment complex where he was employed. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1977).

Governmental immunity does not bar a prisoner's action against the District of Columbia for injury from an unprovoked assault by prison guards of the District. *Baker v. Washington*, 448 F.2d 1200 (D.C. Cir. 1971).

The District of Columbia is not immune from a suit for injuries sustained when plaintiff was placed in crowded cell where a prisoner assaulted him brutally, on the theory that maintaining of the police department and prisons are governmental functions. *Graham v. District of Columbia*, 433 F.2d 536 (D.C. Cir. 1970).

The District of Columbia General Hospital is not immune from suit for injuries sustained as a result of negligent treatment, on theory that the District is a governmental entity. *Spencer v. General Hosp.*, 425 F.2d 479 (D.C. Cir. 1969).

The doctrine of sovereign immunity does not bar a class action on behalf of tenants of rental units of the National Capital Housing Authority against the Mayor of the District of Columbia and the National Capital Housing Authority for injunctive and declaratory relief with respect to rental increases scheduled by the Authority. *Thompson v. Washington*, 497 F.2d 626 (D.C. Cir. 1973), *aff'd in part, rev'd in part*, 551 F.2d 1316 (D.C. Cir. 1977).

The operation of a public market by the District of Columbia is a proprietary function, and the District is liable for injuries to a customer at the public market. *District of Columbia v. Green*, 223 F.2d 312 (D.C. Cir. 1955).

Defense of immunity not waived by filing suit. — The District of Columbia does not waive its defense of immunity from suit arising out of collision between a private vehicle and a Police Department patrol wagon by filing suit against the driver of the private vehicle. *Adams v. District of Columbia*, App. D.C., 122 A.2d 765 (1956).

Immunity not applicable in action brought under federal statute. — In actions brought under a federal statute creating a cause of action for the deprivation of constitutionally protected rights, the District of Columbia can be held liable for its own acts and for those of its employees, regardless of whether those acts would fall within the common-law immunity for discretionary functions. *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976).

Abandonment of immunity is legislative decision. — Whether to abandon immunity of the District of Columbia from civil liability for failure of the District or its officers to keep the peace is for the cognizant legislative body and not matter for the judiciary acting on its own. *Westminster Investing Corp. v. G.C. Murphy Co.*, 434 F.2d 521 (D.C. Cir. 1970).

Punitive damages denied. — Punitive damages were properly denied in a suit against the District of Columbia based on negligence of District parole officers, where there was no indication that higher officers of the District government either participated in or ratified the parole officers' misfeasance. *Rieser v. District of Columbia*, 580 F.2d 647 (D.C. Cir. 1978).

Punitive damages were properly denied to persons who were unlawfully arrested while participating in a peaceful Quaker vigil of prayer on a White House sidewalk. *Tatum v. Morton*, 562 F.2d 1279 (D.C. Cir. 1977).

Executive privilege is not to be lightly invoked, and there must be a formal claim of privilege, lodged by the head of the department that has control over the matter, after actual personal consideration by that officer. *Carter v. Carlson*, 56 F.R.D. 9 (D.D.C. 1972).

Powers of the Board of Public Works are vested in the Mayor, under this section. *Bauman v. Ross*, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270 (1897).

Cited in *Neild v. District of Columbia*, 110 F.2d 246 (D.C. Cir. 1940); *District of Columbia v. Carter*, 409 U.S. 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973); *Marusa v. District of Columbia*, 484 F.2d 828 (D.C. Cir. 1973); *Amos v. District of Columbia*, App. D.C., 309 A.2d 305 (1973); *Watkins v. Washington*, 366 F. Supp. 941 (D.D.C. 1973), *aff'd*, 505 F.2d 477 (D.C. Cir. 1974); *Burner v. Washington*, 399 F. Supp. 44 (D.D.C. 1975); *Dillard v. Yeldell*, App. D.C., 334 A.2d 578 (1975); *District of Columbia v. North Wash. Neighbors, Inc.*, App. D.C., 336 A.2d 828 (1975), *cert. denied*, *North Wash. Neighbors, Inc. v. District of Columbia*, 336 A.2d 828, (D.C. 1976); *Miller v. District of Columbia*, App. D.C., 343 A.2d 278 (1975); *District of Columbia Fed'n of Civic Ass'ns v. Volpe*, 71 F.R.D. 206 (D.D.C. 1976); *District of Columbia v. Morris*, App. D.C., 367 A.2d 571 (1976); *Dellums v. Powell*, 566 F.2d 216 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916, 98 S. Ct. 3146, 57 L. Ed. 2d 1161, (1978); *Jones v. District of Columbia*, 424 F. Supp. 110 (D.D.C. 1977); *District of Columbia v. Green*, App. D.C., 381 A.2d 578 (1977); *Keith v. Washington*, App. D.C., 401 A.2d 468 (1979); *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), *cert. denied*, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

§ 1-103. Officers of corporation.

The Mayor of the District of Columbia and the members of the Council of the District of Columbia shall be deemed and taken as officers of such corporation. (June 11, 1878, 20 Stat. 102, ch. 180, § 1; 1967 Reorg. Plan No. 3, § 405, 81 Stat. 978; 1973 Ed., § 1-103.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 405 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Organic Act of 1878. — See Acts Relating to

the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Cited in *District of Columbia v. Green*, 223 F.2d 312 (D.C. Cir. 1955).

§ 1-104. District as successor corporation.

The District of Columbia is the successor of the corporations of Washington and Georgetown, and all the property of said corporations, and of the County of Washington, is vested in the District of Columbia. (R.S., D.C., § 96; 1973 Ed., § 1-104.)

§ 1-105. Former corporation continued for certain purposes.

The corporation of the District of Columbia is continued for all the purposes of this section and other acts, for the collection of taxes, for suing and being sued, for causes arising prior to June 20, 1874, and for acquiring and holding real estate for school and municipal purposes. (Mar. 3, 1877, 19 Stat. 402, ch. 117, § 15; 1973 Ed., § 1-105.)

Section references. — This section is referred to in § 31-201.

Cited in *Perpetual Bldg. Ltd. Partnership v. District of Columbia*, 618 F. Supp. 603 (D.D.C. 1985).

§ 1-106. Records of former corporations and of levy court made property of District of Columbia.

All records, books, files, maps, plats, surveys, drawings, writings, and other papers, of the late corporations of Washington and Georgetown, or of the levy court of the District of Columbia, or made by persons in the employment or service of either of them, or of the District of Columbia, in the course of such employment or service, or which shall be so made after February 4, 1878, are, and shall be, the property of the District of Columbia. (Feb. 4, 1878, 20 Stat. 23, ch. 12, § 3; 1973 Ed., § 1-106.)

§ 1-107. "Limits of City of Washington" defined; Georgetown abolished; general laws of Washington extended to former Georgetown.

That portion of the District included within the limits of the City of Washington, as the same existed on the 21st day of February, 1871, and all that part of the District of Columbia embraced within the bounds and constituting on February 11, 1895, the City of Georgetown (as referred to in the Acts of Congress approved February 21, 1871, 16 Stat. 419, ch. 62, and June 20, 1874, 18 Stat. 116, ch. 337) shall be known as and shall constitute the City of Washington, the federal capital; and all general laws, ordinances, and regulations of the City of Washington are extended and made applicable to that part of the District of Columbia formerly known as the City of Georgetown. The title and existence of said Georgetown as a separate and independent city by law is abolished. Nothing in this section shall operate to affect or repeal existing law

making Georgetown a port of entry, except as to its name. (R.S., D.C., § 94; Feb. 11, 1895, 28 Stat. 650, ch. 79; 1973 Ed., § 1-107.)

Cited in *Central Amusement Co. v. District of Columbia*, App. D.C., 121 A.2d 865 (1956).

§ 1-108. Name of Uniontown changed to Anacostia.

That portion of the District of Columbia prior to April 22, 1886, known and designated as Uniontown, shall be known and designated as Anacostia. (Apr. 22, 1886, 24 Stat. 14, ch. 58; 1973 Ed., § 1-108.)

§ 1-109. Liability.

(a) *District of Columbia*. — The District of Columbia shall defend any civil action or proceeding pending on the effective date of this title in any court or other official municipal, state, or federal forum against the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding.

(b) *State Justice Institute*. — The State Justice Institute shall not be liable for damages or equitable relief on the basis of the activities or operations of any federal or District of Columbia agency which receives funds through the State Justice Institute pursuant to this title.

(c) *United States*. — The United States, its officers, employees, and agents, and its agencies shall not:

(1) Be responsible for the payment of any judgments, liabilities or costs resulting from any action or proceeding against the District of Columbia or its agencies, officers, employees, or agents;

(2) Be subject to liability in any case on the basis of the activities of the District of Columbia or its agencies, officers, employees, or agents; or

(3) Be subject to liability in any case under section 1979 of the Revised Statutes (42 U.S.C. 1983).

(d) *Limitations*. — Nothing in this section shall be construed as a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents. (Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11723.)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of

Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

Subchapter II. Statehood Constitutional Convention Initiative.

§ 1-111. Purpose.

The purpose of this initiative is to propose to the registered qualified electors of the District of Columbia the question of calling a statehood constitutional convention for the purpose of forming a constitution and otherwise providing a process for a major portion of the territory now known as the District of Columbia to be admitted in the Union as a state on equal footing with the other states. The acts of the convention shall be submitted for ratification by the people, as provided for in this initiative. (Mar. 10, 1981, D.C. Law 3-171, § 2, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(a), 28 DCR 3376.)

Cross references. — As to text of Constitution of the State of New Columbia, see Volume 1.

Legislative history of Law 3-171. — Law 3-171 was submitted to the electors of the District of Columbia on November 4, 1980, as Initiative No. 3. The results of the voting, certified by the Board of Election and Ethics on November 21, 1980, were 90,533 for the Initiative and 60,972 against the Initiative. It was transmitted to both Houses of Congress for its review on January 19, 1981.

Legislative history of Law 4-35. — Law 4-35 was introduced in Council and assigned Bill No. 4-229, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-62 and transmitted to both Houses of Congress for its review.

Constitution approved. — The Constitution developed by the Statehood Constitutional Convention, entitled the "Constitution of the State of New Columbia", was submitted to the electors of the District of Columbia for ratification on November 2, 1982. The results of the voting, certified by the Board of Elections and Ethics on November 10, 1982, were 61,405 for the Constitution and 54,964 against the Constitution.

§ 1-112. Questions to be presented to electors.

For the purpose of this initiative, the District of Columbia Board of Elections and Ethics is authorized and directed to conduct at the next scheduled general, special, or primary election held after March 10, 1981, an election to fill the positions of delegate at-large and ward delegate to the constitutional convention, as prescribed in § 1-114. (Mar. 10, 1981, D.C. Law 3-171, § 3, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(b), 28 DCR 3376.)

Section references. — This section is referred to in § 1-114.

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

§ 1-113. Call of convention; duties of convention; adoption of constitution; rejection of constitution; election of Senator and Representative.

(a) Within 60 days after the Board of Elections and Ethics has certified the election of at-large and ward delegates to the constitutional convention pursuant to § 1-114, the Mayor of the District of Columbia shall call a constitutional convention and assemble the elected delegates. The convention

shall write a constitution within 90 days which shall be republican in form and shall not be repugnant to the Constitution or laws of the United States, and it shall otherwise prepare for the admission of a major portion of the territory now known as the District of Columbia as a state.

(b) The proposed Constitution for the State of New Columbia, approved by Congress June 24, 1987, is amended to read as set forth in Volume 1 of the District of Columbia Code.

(c) If a majority of the registered qualified electors voting reject the constitution, the Mayor shall within 60 calendar days call for the reassembly of the constitutional convention and thereafter a new constitution shall be framed and the same proceedings shall be taken for its submission to the electors of the District of Columbia: Except, that if the proposed constitution of a second constitutional convention is rejected by the registered qualified electors, then the task of writing a constitution acceptable to the electorate shall be abandoned until such time as a new constitutional convention is called for by either legislative action or voter initiative.

(d)(1) Following the approval of a proposed constitution by a majority of the electors voting thereon, there shall be held an election of candidates for the offices of Senator and Representative from the new state. Such election shall be partisan and shall be held at the next regularly scheduled primary and general elections following certification by the District of Columbia Board of Elections and Ethics that the proposed constitution has been approved by a majority of the electors voting thereon. In the event that the proposed constitution is approved by the electors at the general election to be held in November, 1982, the primary and general elections authorized by this paragraph shall be held in September, 1990, and November, 1990, respectively.

(2) The qualifications for candidates for the offices of Senator and Representative shall conform with the provisions of Article I of the United States Constitution and the primary and general elections shall follow the same electoral procedures as provided for candidates for nonvoting Delegate of the District of Columbia in the District of Columbia Election Code of 1955, § 1-1301 et. seq. The term of the 1st Representative elected pursuant to this initiative shall begin on January 2, 1991, and shall expire on January 2, 1993. The terms of the 1st Senators elected pursuant to this initiative shall begin on January 2, 1991, and shall expire on January 2, 1997, and January 2, 1995, respectively. At the initial election, the candidate for Senator receiving the highest number of votes will receive the longer term and the candidate receiving the second highest number of votes will receive the shorter term. A primary and a general election to replace a Representative or a Senator whose term is about to expire shall be held in September and in November respectively, of the year preceding the year during which the term of the Representative or the Senator expires. Each Representative shall be elected for a 2-year term and each Senator shall be elected for a 6-year term as prescribed by the Constitution of the United States.

(3) The District of Columbia Board of Elections and Ethics shall:

(A) Conduct elections to fill the positions of 2 United States Senators and 1 United States Representative; and

(B) Issue such rules and expressly delegate authority to officials and employees of the District of Columbia Board of Elections and Ethics (such delegation of authority only to be effective upon publication in the District of Columbia Register) as are necessary to carry out the purposes of this initiative, and related acts requiring implementation by the District of Columbia Board of Elections and Ethics.

(e) A Representative or Senator elected pursuant to this subchapter shall be a public official as defined in § 1-1462(a), and subscribe to the oath or affirmation of office provided for in § 1-604.8.

(f) A Representative or Senator:

(1) Shall inform the Congress and individual members of Congress that the District of Columbia residents meet the standards traditionally required by Congress for the admission of a United States territory as a state of the United States;

(2) Shall monitor the progress of the petition for admission of New Columbia to statehood pending before the Congress and report on the progress to the District of Columbia residents;

(3) May advise the District of Columbia on matters of public policy that bear on the achievement of statehood;

(4) In accordance with subsection (g) of this section, may employ staff and expend funds donated by private sources for public purposes related to the achievement of statehood; and

(5) Shall have any other powers or duties as may be provided by law.

(g)(1) A Representative or Senator may solicit and receive contributions to support the purposes and operations of the Representative's or Senator's public office. A Representative or Senator may accept services, monies, gifts, endowments, donations, or bequests. A Representative or Senator shall establish a District of Columbia statehood fund in 1 or more financial institutions in the District of Columbia. There shall be deposited in each fund any gift or contribution in whatever form, and any monies not included in annual Congressional appropriations. A Representative or Senator is authorized to administer the Representative's or Senator's respective fund in any manner the Representative or Senator deems wise and prudent, provided that the administration is lawful, in accordance with the fiduciary responsibilities of public office, and does not impose any financial burden on the District of Columbia.

(2) Contributions may be expended for the salary, office, or other expenses necessary to support the purposes and operations of the public office of a Representative or Senator, however, each Representative or Senator shall receive compensation no greater than the compensation of the Chairman of the Council of the District of Columbia, as provided in §§ 1-226 and 1-612.9.

(3) Each Representative or Senator shall file with the Director of Campaign Finance a quarterly report of all contributions received and expenditures made in accordance with paragraph (1) of this subsection. No campaign activities related to election or re-election to the office of Representative or Senator shall be conducted nor shall expenditures for campaign literature or paraphernalia be authorized under paragraph (1) of this subsection.

(4) The recordkeeping requirements of Chapter 14 of this title, shall apply to contributions and expenditures made under paragraph (1) of this subsection.

(5) Upon expiration of a Representative's or Senator's term of office and where the Representative or Senator has not been re-elected, the Representative's or Senator's statehood fund, established in accordance with paragraph (1) of this subsection, shall be dissolved and any excess funds shall be used to retire the Representative's or Senator's debts for salary, office, or other expenses necessary to support the purposes and operation of the public office of the Representative or Senator. Any remaining funds shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of section 501(c) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. 501(c)).

(h) A Representative or Senator elected pursuant to subsection (d) of this section, shall be subject to recall pursuant to § 1-1321, during the period of the Representative's or Senator's service prior to the admission of the proposed new state into the union. (Mar. 10, 1981, D.C. Law 3-171, § 4, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(c), 28 DCR 3376; Aug. 14, 1982, D.C. Law 4-138, § 2, 29 DCR 2761; Aug. 2, 1983, D.C. Law 5-17, § 4, 30 DCR 3196; Aug. 10, 1984, D.C. Law 5-105, § 2, 31 DCR 3040; Apr. 23, 1985, D.C. Law 6-1, § 2, 32 DCR 1475; May 13, 1987, D.C. Law 7-2, § 2, 34 DCR 2153; June 24, 1987, D.C. Law 7-8, § 2, 34 DCR 3057; June 24, 1987, D.C. Law 7-10, § 2, 34 DCR 3286; June 8, 1990, D.C. Law 8-135, § 2, 37 DCR 2616.)

Section references. — This section is referred to in §§ 1-113a, 1-114, 1-117, 1-1314, and 1-1462.

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

Legislative history of Law 4-138. — See note to § 1-119.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-105. — Law 5-105 was introduced in Council and assigned Bill No. 5-414. The Bill was adopted on first and second readings on April 30, 1984 and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-146 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-1. — Law 6-1 was introduced in Council and assigned Bill No. 6-59, which was referred to the Committee on Government Operations. The Bill was

adopted on first and second readings on January 29, 1985 and February 12, 1985, respectively. Signed by the Mayor on February 28, 1985, it was assigned Act No. 6-11 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-2. — Law 7-2 was introduced in Council and assigned Bill No. 7-126. The Bill was adopted on first and second readings on February 17, 1987 and March 3, 1987, respectively. Signed by the Mayor on March 19, 1987, it was assigned Act No. 7-6 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-8. — See note to § 1-113.1.

Legislative history of Law 7-10. — Law 7-10 was introduced in Council and assigned Bill No. 7-134, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 31, 1987 and April 14, 1987, respectively. Signed by the Mayor on May 6, 1987, it was assigned Act No. 7-21 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-135. — See note to § 1-113a.

Restriction on use of funds. — Section 128 of Pub. L. 104-194, 110 Stat. 2368, the District of Columbia Appropriations Act, 1997, provided that none of the funds provided in this Act may

be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under subsection (d) of this section.

Amendment of proposed Constitution. — For text of proposed Constitution for the State of New Columbia as amended by D.C. Law 7-8, see Volume 1.

§ 1-113a. Application of honoraria limitations.

Notwithstanding the provisions of § 1-119, the honoraria limitations imposed by subchapter VIII of Chapter 14 of this title shall apply to a Senator or Representative elected pursuant to § 1-113(d)(1), only if the salary of the Senator or Representative is supported by public revenues. (June 8, 1990, D.C. Law 8-135, § 4, 37 DCR 2616.)

Legislative history of Law 8-135. — Law 8-135 was introduced in Council and assigned Bill No. 8-488, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

February 27, 1990 and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-191 and transmitted to both Houses of Congress for its review.

§ 1-113.1. Approval and ratification of Constitution.

No proposed Constitution for the State of New Columbia shall take effect as the Constitution of the State of New Columbia until approved by the Congress of the United States and ratified in a referendum by a majority of the registered qualified electors of the District of Columbia voting thereon. (June 24, 1987, D.C. Law 7-8, § 3, 34 DCR 3057.)

Legislative history of Law 7-8. — Law 7-8, the “Constitution for the State of New Columbia Approval Act of 1987,” was introduced in Council and assigned Bill No. 7-154, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on May 6, 1987, it was assigned Act No. 7-19 and transmitted to both Houses of Congress for its review.

§ 1-114. Composition of convention; election of delegate candidates; compensation; office space; appropriations.

(a) The constitutional convention authorized by this initiative shall consist of 45 delegates selected in the following manner: Five delegates elected at large; and 5 delegates elected from each of the 8 election wards.

(b) Candidates for at-large delegates shall file with the Board of Elections and Ethics a nominating petition signed by at least 200 of the registered qualified electors of the District of Columbia such that there will be at least 25 certified signatures from each of the 8 election wards. The 5 candidates for at-large delegate who receive the highest number of votes shall be declared elected and shall serve for 3-year terms.

(c) Candidates for the ward delegate positions shall file with the Board of Elections and Ethics a nominating petition signed by at least 50 of the registered qualified electors from the election ward from which the candidate seeks nomination. The 5 candidates from each of the 8 election wards receiving

the highest number of votes shall be declared elected to represent that ward and shall serve for 3-year terms.

(d) Each of the elected delegates, as authorized by subsection (a) of this section, shall be entitled to receive \$30 per diem when engaged in the performance of the duties of the constitutional convention.

(e)(1) Except as they may be modified by this section, the election procedures prescribed by Chapter 13 of this title and Chapter 14 of this title for at-large and ward candidates for the Board of Education shall be applicable in respect to at-large and ward candidates for delegate to the constitutional convention.

(2) Each candidate for delegate and each delegate to the constitutional convention shall be a registered qualified voting resident of the District of Columbia and the discontinuance of such residence shall result in forfeiture of the convention seat occupied by such delegate. Each candidate for delegate and each delegate representing a ward shall be a registered qualified voting resident of that ward and the discontinuance of such residence in that ward shall result in forfeiture of the convention seat occupied by such ward delegate. No ward delegate shall forfeit his or her seat solely by reason of a change in ward boundaries.

(3) A vacancy in the convention arising from any cause shall be filled temporarily by the convention and such temporary appointee may serve for the remainder of the 3-year term or until such earlier time as the seat has been filled by an election which shall be held by the Board of Elections and Ethics in accordance with its regulations concurrently with the earliest practicable special, primary, or general election being held to fill 1 or more offices other than that of convention delegate.

(f) The District of Columbia government shall furnish such space in public buildings for the constitutional convention as is necessary to accommodate public attendance at convention hearings, meetings, and sessions, and shall provide all records and services as may be required by the constitutional convention for carrying out its function.

(g) There is hereby authorized an appropriation from the General Fund of the District of Columbia a sum not in excess of \$400,000 to the constitutional convention for such expenses as it may have in carrying out its duties and responsibilities under this initiative.

(h) There is hereby authorized an appropriation from the General Fund of the District of Columbia a sum not in excess of \$50,000 to the Board of Elections and Ethics for the administration of the elections authorized in §§ 1-112 and 1-113(b), and in otherwise carrying out the provisions of this initiative. (Mar. 10, 1981, D.C. Law 3-171, § 5, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(d), 28 DCR 3376; Nov. 17, 1981, D.C. Law 4-52, § 3(a), 28 DCR 4348.)

Section references. — This section is referred to in §§ 1-112 and 1-113.

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

Legislative history of Law 4-52. — Law 4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively.

Signed by the Mayor on September 25, 1981, it was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

§ 1-115. Statehood Commission.

(a) The Statehood Commission shall consist of 27 voting members appointed in the following manner:

- (1) The Mayor of the District of Columbia shall appoint 2 members;
- (2) The Chairman of the Council of the District of Columbia shall appoint 2 members;
- (3) The at-large members of the Council shall each appoint 1 member;
- (4) The ward members of the Council shall each appoint 2 members from their respective wards;
- (5) The United States Senators shall each appoint 1 member;
- (6) The United States Representative shall appoint 1 member; and
- (7) The Mayor, the Chairman of the Council, and the Councilmember whose purview the Statehood Commission comes within shall be non-voting members of the Commission.

(a-1)(1) Notwithstanding any other provision of law, members serving unexpired terms on August 26, 1994, may continue to serve until appointments or reappointments are confirmed. Appointments or reappointments shall be made immediately after August 26, 1994, in the following manner:

(A) The Mayor shall appoint 1 member for a term of 4 years and 1 member for a term of 2 years.

(B) The Chairman shall appoint 1 member for a term of 4 years and 1 member for a term of 2 years.

(C) The 2 senior at-large members of the Council shall each appoint 1 member for a 4 year term.

(D) The 2 remaining at-large members of the Council shall each appoint 1 member for a 2 year term.

(E) The ward members of the Council shall each appoint 2 members from their respective wards in the following manner:

- (i) One member for a 4 year term; and
- (ii) One member for a 2 year term.

(F) The senior United States Senator shall appoint 1 member for a 4 year term.

(G) The junior United States Senator shall appoint 1 member for a 2 year term.

(H) The United States Representative shall appoint 1 member for a 2 year term.

(2) All appointments or reappointments pursuant to subsection (a) of this section shall be for a term of 4 years.

(3) A vacancy on the Commission shall be filled in the same manner that the original appointment was made.

(4) A member of the Commission may continue to serve after the expiration of that member's term until a successor is appointed.

(a-2) All members of the Statehood Commission shall be residents of the District of Columbia.

(a-3) The chairman of the Statehood Commission shall be elected every 2 years, by the members of the Commission.

(b) It shall be the duty of the Statehood Commission to educate, advocate, promote, and advance the proposition of statehood for the District of Columbia within the District of Columbia and elsewhere.

(c) Repealed.

(c-1) The Commission shall meet at least once a month. All meetings of the Commission shall be open to the public. (Mar. 10, 1981, D.C. Law 3-171, § 6, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(e), 28 DCR 3376; Aug. 26, 1994, D.C. Law 10-167, § 2(a), 41 DCR 4895.)

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

Legislative history of Law 10-167. — Law 10-167, the “Statehood Commission Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-549, which was referred to the Committee on Self-Determination. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-280 and transmitted to both Houses of Congress for its review. D.C. Law 10-167 became effective on August 26, 1994.

Sources of funding appropriation. — Section 101(d) of Pub. L. 99-591, the D.C.

Appropriations Act, 1987, provided that the District of Columbia shall identify the sources of funding for admission to statehood from its own locally-generated revenues and provided further that no revenues from federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

Section 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues and provided further that no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

§ 1-116. Statehood Compact Commission.

(a) The Statehood Commission shall have the power to establish a commission to be known as the “Statehood Compact Commission”, which shall consist of members of the Statehood Commission as may be deemed necessary by the Commission, as well as an equal number of members representing the federal government as may be authorized by the President or the Congress of the United States. The Mayor, Chairman, and the Councilmember whose purview the Statehood Commission comes within shall be members of the Compact Commission. The Mayor, Chairman, and Councilmember may each delegate an individual to act in their place.

(b) It shall be the duty of the Statehood Compact Commission:

(1) To conduct a full and complete study of the necessary and appropriate legislation and administrative action that must be taken in order to facilitate the transfer of authority and functions over that portion of the District of Columbia which will comprise the new state;

(2) To give special consideration to the relationship that should be developed to secure and maintain any special federal interest in the new state; and

(3) To submit to the constitutional convention full and detailed reports with findings and recommendations.

(4) Repealed.

(c) Repealed. (Mar. 10, 1981, D.C. Law 3-171, § 7, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(f), 28 DCR 3376; Aug. 26, 1994, D.C. Law 10-167, § 2(b), 41 DCR 4895; Apr. 9, 1997, D.C. Law 11-255, § 2, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (a).

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

Legislative history of Law 10-167. — See note to § 1-115.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Sources of funding appropriation. — Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that the District of Columbia shall identify the sources of funding for admission to statehood from its own locally-generated revenues and provided further that no revenues from federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

Section 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues and provided further that no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

§ 1-117. Appropriations.

There is authorized to be appropriated from the General Fund of the District of Columbia an amount for the salaries and office expenses of the elected representatives to the Senate and House referred to in § 1-113(d) during the period of their service prior to the admission of the proposed new state into the union. (Mar. 10, 1981, D.C. Law 3-171, § 8, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(g), 28 DCR 3376; Mar. 14, 1985, D.C. Law 5-159, § 19, 32 DCR 30.)

Legislative history of Law 3-171. — See note to § 1-111.

Legislative history of Law 4-35. — See note to § 1-111.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 1-118. Severability.

If any provisions or section of this measure, or the application thereof, shall in any circumstances be held invalid, such invalidity shall not affect the validity of the remainder of the provisions or applications. (Mar. 10, 1981, D.C. Law 3-171, § 9, 27 DCR 4732.)

Legislative history of Law 3-171. — See note to § 1-111.

§ 1-119. Application of Campaign Finance Reform and Conflict of Interest Act.

All provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, § 1-1401 et seq., which apply to the election of and service of the Mayor of the District of Columbia shall apply to persons who are candidates or elected to serve as United States Senators and United States Representative pursuant to this initiative. (Aug. 14, 1982, D.C. Law 4-138, § 3, 29 DCR 2761.)

Section references. — This section is referred to in § 1-113a.

Legislative history of Law 4-138. — Law 4-138, the “Statehood Convention Procedural Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-450, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 1982 and June 8, 1982, respectively. Signed by the Mayor on June 21, 1982, it was

assigned Act No. 4-204 and transmitted to both Houses of Congress for its review.

Expiration of Law 4-138. — Section 4 of D.C. Law 4-138 provided that the provisions of § 1-119 shall expire 30 days after the date that the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431 et seq.) are determined by appropriate federal authorities to apply to the Senators and Representative from the District of Columbia.

Subchapter III. District of Columbia Flag.

§ 1-121. Findings.

The Council of the District of Columbia finds that:

(1) Section 2 of a joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America (36 U.S.C. § 174) addresses the method, time, and places for the display of the United States flag:

(A) The flag should be hoisted briskly and lowered ceremoniously.

(B) It is the universal custom to display the flag only from sunrise to sunset on buildings and stationary flagstaffs in the open. When a patriotic effect is desired, however, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.

(C) The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed.

(D) The flag should be displayed on all days, especially on those days designated as federal and state holidays.

(E) The flag should be displayed daily on or near the main administration building of every public institution.

(F) The flag should be displayed in or near every polling place on election days.

(G) The flag should be displayed during school days in or near every schoolhouse.

(2) The display of the District of Columbia flag will inculcate a spirit of patriotism in our citizens. (July 1, 1982, D.C. Law 4-121, § 2, 29 DCR 2072.)

Legislative history of Law 4-121. — Law 4-121, the “District of Columbia Flag Display Act of 1982,” was introduced in Council and

assigned Bill No. 4-365, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 6,

1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-184 and transmitted to both Houses of Congress for its review.

Cited in *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990).

§ 1-122. Requirements as to display.

The flag of the District of Columbia shall be displayed in the same manner, at the same time, and on the same occasions as the flag of the United States is displayed in the District of Columbia pursuant to and consistent with federal law. (July 1, 1982, D.C. Law 4-121, § 3, 29 DCR 2072.)

Legislative history of Law 4-121. — See note to § 1-121.

§ 1-123. Staff to be used.

Wherever practicable, the District of Columbia flag shall be flown on the same staff as the United States flag. (July 1, 1982, D.C. Law 4-121, § 4, 29 DCR 2072.)

Legislative history of Law 4-121. — See note to § 1-121.

§ 1-124. Inside public buildings.

The flag of the District of Columbia shall be displayed inside all public buildings whenever and wherever the flag of the United States is displayed. (July 1, 1982, D.C. Law 4-121, § 5, 29 DCR 2072.)

Legislative history of Law 4-121. — See note to § 1-121. **Cited** in *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

§ 1-125. Notice to commercial property owners.

The Department of Finance and Revenue shall give notice of the provisions of this subchapter in each real property tax bill sent to commercial property owners in the next mailing immediately following July 1, 1982. (July 1, 1982, D.C. Law 4-121, § 6, 29 DCR 2072.)

Legislative history of Law 4-121. — See note to § 1-121.

Subchapter IV. Official Dinosaur of the District of Columbia.

§ 1-131. Capitalsaurus dinosaur.

(a) The Capitalsaurus dinosaur was discovered in January 1898, at First and F Streets, S.E., in the District of Columbia by workmen during a sewer connection project, and is the only known specimen of its kind in the world.

(b) The Capitalsaurus was a large meat eating reptile which may be an ancestor of the *T. (tyrannosaurus) rex*.

(c) About 110 million years ago, the Capitalsaurus lived in the District of Columbia with many other dinosaurs including herbivores.

(d) During the lifetime of the Capitalsaurus, the District of Columbia resembled the bayou country of southern Louisiana.

(e) The Capitalsaurus fossil discovered in 1898 is now at the Smithsonian Museum of Natural History in the type room.

(f) The Capitalsaurus is unique to the District of Columbia because its fossil remains have not been discovered anywhere else in the world.

(g) The vertebra of the dinosaur was given to the Smithsonian Institution as a gift by J.K. Murphy on January 28, 1898, and was recorded as accession number 33153 and specimen number NMNH 3409.

(h) District of Columbia Public School students have been studying the Capitalsaurus and many other dinosaurs from this area for years.

(i) The students have also helped to dig up dinosaurs fossils which are now part of the Smithsonian's permanent collection.

(j) The Capitalsaurus shall be the official Dinosaur of the District of Columbia. (Sept. 30, 1998, D.C. Law 12-155, § 2, 45 DCR 4476; Apr. 20, 1999, D.C. Law 12-264, § 2, 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-264 substituted "NMNH 3409" for "NMNH 3904" in (g).

Legislative history of Law 12-155. — Law 12-155, the "Official Dinosaur Act of 1998," was introduced in Council and assigned Bill No. 12-538, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 10, 1998, it was assigned Act No. 12-382 and transmitted to both Houses of Congress for its review. D.C. Law 12-155 became effective on September 30, 1998.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998 and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

ADMINISTRATION

CHAPTER 2. SELF-GOVERNMENT.

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*Subchapter I. General Provisions.***§ 1-201. Purposes.**

(a) Subject to the retention by Congress of the ultimate legislative authority over the nation's capital granted by article I, § 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this Act is accepted or rejected by the registered qualified electors of the District of Columbia. (1973 Ed., § 1-121; Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 102.)

Cross references. — As to Congressional reservation of authority, see §§ 1-206, 1-207, 1-233, and 47-313.

Section references. — This section is referred to in §§ 1-338, 1-2295.1, 32-262.5, 43-1672, 43-1673, 47-340.1, and 47-2752.

References in text. — "This Act," referred to in subsection (b) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198), set out in Volume 1.

Short Title of Home Rule Act. — Section 11717 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided as follows:

"(a) IN GENERAL. — Section 101 of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking 'District of Columbia Self-Government and Governmental Reorganization Act' and inserting 'District of Columbia Home Rule Act.'"

“(b) REFERENCES IN LAW — Any reference in law or regulation to the District of Columbia Self-Government and Governmental Reorganization Act shall be deemed to be a reference to the District of Columbia Home Rule Act.”

Core and primary purpose of home rule statute is to relieve Congress of the burden of legislating upon essentially local matters to the greatest extent possible. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Act mandates development of comprehensive personnel system. — Under the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, among the powers and authority thereby delegated, the District government was given the mandate to develop its own comprehensive personnel system to replace the federal system which controlled. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Council’s emergency power is exception to usual legislative process. — Congress intended the Council’s emergency power to be an exception to the fundamental legislative process requiring a 2nd reading and congressional layover. It is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Home Rule Act not violated. — District’s handling of application for condominium conversion did not rise to the level of a constitutional violation or violate the Home Rule Act. *Silverman v. Barry*, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988).

Initiative and referendum. — Adoption of the initiative right by Council, Mayor, and the electorate did not violate the District’s Charter. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Although there was a defect in the language of the initiative measure (use of the words “in five or more of the City’s wards” instead of “in each of five or more of the City’s wards”), which was later corrected by amendment to the provision, the legislation approved by Council and signed by the Mayor were not different in intent. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Garnishment. — If the garnishment of District of Columbia workers’ salaries is to be

permitted, then that relief lies within the province of the legislative branch — whether the Congress or the District Council — not the courts. *Allied Capital Lending Corp. v. Stubbs*, 123 WLR 389 (Super. Ct. 1995).

Cited in *District of Columbia v. Catholic Univ. of Am.*, App. D.C., 397 A.2d 915 (1979); *Apartment & Office Bldg. Ass’n v. District of Columbia*, App. D.C., 415 A.2d 797 (1980); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981); *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983); *A & G Ltd. Partnership v. Joint Comm. on Landmarks of Nat’l Capital*, App. D.C., 449 A.2d 291 (1982); *District of Columbia v. Owens-Corning Fiberglas Corp.*, 604 F. Supp. 1459 (D.D.C. 1985); *Barnes v. District of Columbia*, 611 F. Supp. 130 (D.D.C. 1985); *In re Metro Subway Accident Referral*, 630 F. Supp. 385 (D.D.C. 1984), aff’d sub nom. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Featherstone v. Omni Constr., Inc.*, 114 WLR 101 (Super. Ct. 1986); *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986); *Potomac Elec. Power Co. v. District of Columbia Gov’t*, 651 F. Supp. 907 (D.D.C. 1986); *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986); *McConnell v. United States*, App. D.C., 537 A.2d 211 (1988); *Newspapers, Inc. v. Metropolitan Police Dep’t*, App. D.C., 546 A.2d 990 (1988); *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989); *Brown v. Edes Home*, 118 WLR 1277 (Super. Ct. 1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *United States v. Alston*, App. D.C., 580 A.2d 587 (1990); *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), aff’d, 23 F.3d 507 (D.C. Cir. 1994); *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992); *Dano Resource Recovery, Inc. v. District of Columbia*, 923 F. Supp. 249 (D.D.C. 1996); *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-202. Definitions.

For the purposes of this Act:

- (1) The term “District” means the District of Columbia.

(2) The term “Council” means the Council of the District of Columbia provided for by subchapter III of this chapter.

(3) The term “Commissioner” means the Commissioner of the District of Columbia established under Reorganization Plan No. 3 of 1967.

(4) The term “District of Columbia Council” means the Council of the District of Columbia established under Reorganization Plan No. 3 of 1967.

(5) The term “Chairman” means, unless otherwise provided in this Act, the Chairman of the Council provided for by subchapter III of this chapter.

(6) The term “Mayor” means the Mayor provided for by subchapter IV of this chapter.

(7) The term “act” includes any legislation passed by the Council, except where the term “Act” is used to refer to this Act or other Acts of Congress herein specified.

(8) The term “capital project” means any physical public betterment or improvement, the acquisition of property of a permanent nature, or the purchase of equipment or furnishings, and includes:

(A) Costs of any preliminary plans, studies, and surveys in connection with such betterment, improvement, acquisition, or purchase;

(B) Costs incidental to such betterment, improvement, acquisition, or purchase, and the financing thereof, including the cost of any election, professional fees, printing or engraving, production and reproduction of documents, publication of notices, taking of title, bond insurance, and interest during construction; and

(C) The reimbursement of any fund or account for amounts expended for the payment of any such costs.

(9) The term “pending”, when applied to any capital project, means authorized but not yet completed.

(10) The term “District revenues” means all funds derived from taxes, fees, charges, miscellaneous receipts, grants and other forms of financial assistance, or the sale of bonds, notes, or other obligations, and any funds administered by the District government under cost sharing arrangements.

(11) The term “election”, unless the context otherwise provides, means an election held pursuant to the provisions of this Act.

(12) The terms “publish” and “publication”, unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term “District of Columbia Courts” means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term “resources” means revenues, balances, enterprise or other revolving funds, and funds realized from borrowing.

(15) The term “budget” means the entire request for appropriations or loan or spending authority for all activities of all departments or agencies of the District of Columbia financed from all existing, proposed, or anticipated resources, and shall include both operating and capital expenditures. (1973 Ed., § 1-122; Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 103; Dec. 28, 1981, 95 Stat. 1493, Pub. L. 97-105, § 1; Apr. 17, 1995, 109 Stat. 141, Pub. L. 104-8, § 301(a)(1); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(1)(A).)

Section references. — This section is referred to in §§ 1-1531, 1-1601, and 2-602.

Effect of amendments. — Section 11601(b)(1)(A) of Pub. L. 105-33, 111 Stat. 777, in (10), deleted “the annual Federal payment to the District authorized under title V” following “miscellaneous receipts.”

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Application of § 301(a)(1) of Pub. L. 104-8. — Section 301(a)(2) of Pub. L. 104-8, 109 Stat. 142, provided that the amendments made by paragraph (a)(1) shall apply with respect to revenues, resources, and budgets of the District of Columbia for fiscal years beginning with fiscal year 1996.

Cited in *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Neighbors United For A Safer Community v. Board of Zoning Adjustment*, App. D.C., 647 A.2d 793 (1994).

§ 1-203. Charter preamble.

The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto. (1973 Ed., § 1-123; Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 301.)

References in text. — “Title IV,” referred to in this section, is title IV of the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 88 Stat. 785, Pub. L. 93-198).

Cited in *Techworld Dev. Corp. v. District of*

Columbia Preservation League, 648 F. Supp. 106 (D.D.C. 1986); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

§ 1-204. Legislative power.

Except as provided in §§ 1-206, 1-233, and 47-313, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States. (1973 Ed., § 1-124; Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 302.)

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Congress is not bound by the Contract Clause (U.S. Const., Art. I, § 10) in legislating for the District of Columbia. *District of Columbia v. American Fed’n of Gov’t Employees*, App. D.C., 619 A.2d 77, cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993).

Congressional action supersedes Contract Clause limitations. — Congressional action through the appropriations process, which is immune from the Contract Clause, superseded or “trumped” any Contract Clause-type limitation of the District’s 1993 Budget Request Act, and thus mooted any possible District violation of this section. *District of*

Columbia v. American Fed’n of Gov’t Employees, App. D.C., 619 A.2d 77, cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993).

Congressional reduction-in-force provisions insulated from Contract Clause. — Even though the District is subject to the Contract Clause, reduction-in-force provisions enacted by the Congress are insulated from a challenge under the Contract Clause. *Washington Teachers’ Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

Legislative intent. — The intent of this section is, with exceptions for taxation of federal property and enactment of an income tax on nonresidents, that the elected Mayor and Council of the District of Columbia can decide in what way and how much to tax their citizens, can enact local ordinances into law, and can begin to shape their own destiny as should be

the right of all American citizens. *Sprint Communications Co. v. Kelly*, App. D.C., 642 A.2d 106, cert. denied, 513 U.S. 916, 115 S. Ct. 294, 130 L. Ed. 2d 208 (1994).

Council's emergency power is exception to usual legislative process. — Congress intended the Council's emergency power to be an exception to the fundamental legislative process requiring a 2nd reading and congressional layover; it is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Amendment of charter. — The charter may be amended only in accordance with the procedure specified in this section and §§ 1-205 and 1-208(a). *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

No intent to prohibit workmen's compensation legislation. — Nothing in the language or the legislative history of the Self-Government Act indicates Congress' intent to prohibit the District from enacting legislation concerning workmen's compensation for the private sector. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Prohibition of discrimination in insurance. — The Prohibition of Discrimination in

the Provision of Insurance Act of 1986 (D.C. Act 6-170) applies only when insurance companies are doing business within the District and is not in violation of this section. *American Council of Life Ins. v. District of Columbia*, 645 F. Supp. 84 (D.D.C. 1986).

Judicial review. — The Superior Court has the authority, indeed the obligation and duty, to hold a provision of an Act of Congress, which is in substance local legislation, unconstitutional in the same manner and to the same extent that a state court judge could hold a provision of state legislation unconstitutional, if the law so required. *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992).

Cited in *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527 (D.C. Cir. 1980); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986); *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-205. Charter amending procedure.

(a) The charter set forth in title IV (including any provision of law amended by such title), except §§ 1-221(a) and 1-241(a), and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered electors shall take effect upon the expiration of the 35-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless during such 35-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in § 1-207, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such 35-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 35-day period,

shall be deemed to have repealed such amendment, as of the date such resolution becomes law.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a) of this section.

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in §§ 1-206, 1-233, and 47-313. (1973 Ed., § 1-125; Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 303; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(b).)

References in text. — “Title IV,” referred to in subsections (a) and (c) of this section, is title IV of the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 88 Stat. 785, Pub. L. 93-198).

“Part C of such title,” referred to in subsection (a) of this section, consists of §§ 431 to 434 of the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 88 Stat. 785, Pub. L. 93-198).

Fiscal year. — Section 131(n) of Pub. L. 98-473 provided that the provisions of this section shall be effective hereafter without limitation as to fiscal year, notwithstanding any other provision of the joint resolution.

Intent of Council and Congress. — An amendment to the charter, such as the right of initiative, must be construed in light of the statutory scheme established by the charter in the District of Columbia Self-Government and Governmental Reorganization Act, so that the court must consider congressional intent in approving the amendment, and the court must address the intent of the Council. *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

Procedure specified by statute. — The charter may be amended only in accordance with the procedure specified in this section and §§ 1-204 and 1-208(a). *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Impermissible procedures. — A procedure is impermissible where it would amend a section immediately on voter ratification of the

initiative at a primary election, omitting any action by Congress entirely. *Johnson v. District of Columbia Bd. of Elections & Ethics*, 122 WLR 1593 (Super. Ct. 1994).

The 2-house approval requirement is severable from this section. First, this section is fully operable as law without the approval provisions. Second, this procedure is consistent with the general statutory scheme because the purpose of this chapter in general is to provide autonomy and local democracy to the District. *McClough v. United States*, App. D.C., 520 A.2d 285 (1987).

Initiative and referendum. — Adoption of the initiative right by Council, Mayor, and the electorate did not violate the District’s Charter. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Although there was a defect in the language of the initiative measure (use of the words “in five or more of the City’s wards” instead of “in each of five or more of the City’s wards”), which was later corrected by amendment to the provision, the legislation approved by Council and signed by the Mayor were not different in intent. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Cited in *Gary v. United States*, App. D.C., 499 A.2d 815 (1985), cert. denied sub nom. *Cole v. United States*, 475 U.S. 1086, 106 S. Ct. 1470, 89 L. Ed. 2d 725, cert. denied, 477 U.S. 906, 106 S. Ct. 3279, 90 L. Ed. 2d 568 (1986); *Potomac Elec. Power Co. v. District of Columbia Gov’t*, 651 F. Supp. 907 (D.D.C. 1986); *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990).

§ 1-206. Congressional reservation of authority.

Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in

the District prior to or after enactment of this Act and any act passed by the Council. (1973 Ed., § 1-126; Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 601.)

Cross references. — As to limitations on Council of District of Columbia, see § 1-233.

As to budget process and limitations on District's borrowing and spending, see § 47-313.

Section references. — This section is referred to in §§ 1-204, 1-205, and 1-227.

References in text. — "This Act," referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Remedies for deprivation of rights. — The fact that members of Congress who were deprived of their right under the Home Rule Act to consider an act before it became law have another potential remedy available to them in Congress, namely, passage of legislation repealing the act, does not cure the injury they allegedly suffered in having been deprived of their rightful opportunity to consider the act before it took effect; however, in an action, the court would still refrain from hearing the case where a congressional legislator could obtain substantial relief from his fellow legislators through the enactment, repeal, or amendment of a statute. *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), *aff'd*, 23 F.3d 507 (D.C. Cir. 1994).

Creation of Financial Control Board authorized. — When Congress created the Financial Control Board and gave it authority to take over, replace, or eliminate the Lottery Board, Congress was exercising its constitutional authority as legislature for the District, not impermissibly expanding its legislative power in violation of the separation of powers doctrine. *Brewer v. District of Columbia Fin.*

Responsibility & Mgt. Assistance Auth., 953 F. Supp. 406 (D.D.C. 1997).

Delegation of power to Financial Control Board. — Congress has delegated its plenary power to run the schools of the District to the District of Columbia Financial Responsibility and Management Assistance Authority. *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 964 F. Supp. 416 (D.D.C. 1997).

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); *In re Metro Subway Accident Referral*, 630 F. Supp. 385 (D.D.C. 1984), *aff'd sub nom. Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), *cert. denied*, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); *McClough v. United States*, App. D.C., 520 A.2d 285 (1987); *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct. 1987); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Fitzgerald v. Fitzgerald*, App. D.C., 566 A.2d 719 (1989); *Atkinson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 597 A.2d 863 (1991); *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992); *District of Columbia v. American Fed'n of Gov't Employees*, App. D.C., 619 A.2d 77 (1993), *cert. denied*, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993); *Allied Capital Lending Corp. v. Stubbs*, 123 WLR 389 (Super. Ct. 1995); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995).

§ 1-207. Congressional action on certain District matters.

(a) This section is enacted by Congress:

(1) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) With full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the

..... approves/disapproves of the action of the District of Columbia Council described as follows:, the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than 1 action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the Committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the Committee from further consideration of any other resolution with respect to the same Council action which has been referred to the Committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the Committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the Committee be made with respect to any other resolution with respect to the same action.

(g) When the Committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from Committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate. (1973 Ed., § 1-127; Dec. 24, 1973, 87 Stat. 816, Pub. L. 93-198, title VI, § 604; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(h).)

Section references. — This section is referred to in §§ 1-205, 1-227, and 1-233.

Fiscal year. — See note to § 1-205.

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); Embassy of People's Republic of Benin v. Dis-

trict of Columbia Bd. of Zoning Adjustment, App. D.C., 534 A.2d 310 (1987); Railco Multi-

Construction Co. v. Gardner, App. D.C., 564 A.2d 1167 (1989).

§ 1-208. Construction of Act.

(a) To the extent that any provisions of this Act are inconsistent with the provisions of any other laws, the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

(b) No law or regulation which is in force on January 2, 1975, shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of § 1-1307, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of Chapter 73 of Title 5, United States Code, in whole or in part. (1973 Ed., § 1-128; Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, §§ 717(b), 761; Mar. 3, 1979, D.C. Law 2-139, § 3205(kk), 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-14. — Law 3-14 was introduced in Council and assigned Bill No. 3-114, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-51 and transmitted to both Houses of Congress for its review.

References in text. — "This Act," referred to in this section, is the District of Columbia Self-Government and Governmental Reorgani-

zation Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Amendment of charter. — The charter may be amended only in accordance with the procedure specified in §§ 1-204, 1-205 and subsection (a) of this section. Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

Cited in Goodwin v. District of Columbia Bd. of Educ., App. D.C., 343 A.2d 63 (1975); Shreeves v. United States, App. D.C., 395 A.2d 774 (1978), cert. denied, 441 U.S. 943, 99 S. Ct. 2161, 60 L. Ed. 2d 1045 (1979), overruled on other grounds, Dew v. United States, 558 A.2d 1112 (D.C. 1989); French v. Devine, 547 F. Supp. 443 (D.D.C. 1982); In re Metro Subway Accident Referral, 630 F. Supp. 385 (D.D.C. 1984), aff'd sub nom. Keener v. Washington Metro. Area Transit Auth., 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); Holiday v. United States, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

Subchapter II. Succession in Government.

§ 1-211. Abolishment of existing government.

The District of Columbia Council, the Offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the 7 other members of the District of Columbia Council, and the Offices of the

Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan No. 3 of 1967, are abolished as of noon January 2, 1975. This section shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore. (1973 Ed., § 1-131; Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 711.)

Cited in *Knable v. Wilson*, 570 F.2d 957 (D.C. Cir. 1977); *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978); *District of Columbia v. Catholic Univ. of Am.*, App. D.C., 397 A.2d 915 (1979); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

§ 1-212. Certain delegated functions; functions of certain agencies.

No function of the District of Columbia Council (established under Reorganization Plan No. 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to § 501 of Reorganization Plan No. 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to § 1-227(a). Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting. (1973 Ed., § 1-132; Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 712.)

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act, (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

§ 1-212.1. Transfer of personnel, property, and funds.

(a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a) of this section, such questions shall be decided:

(1) In the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) In the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service. (1973 Ed., § 1-131 note; Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 713.)

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorgani-

zation Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198), set out in Volume 1.

§ 1-213. Existing statutes, regulations, and other actions.

(a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a) of this section, the term “other action” includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage. (1973 Ed., § 1-133; Dec. 24, 1973, 87 Stat. 819, Pub. L. 93-198, title VII, § 714.)

Section references. — This section is referred to in § 1-242.

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorgani-

zation Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Cited in *Simms v. District of Columbia*, App. D.C., 612 A.2d 215 (1992).

Subchapter III. Council.

§ 1-221. Creation; membership; personnel; vacancies [Charter Provision].

(a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b)(1) The Council established under subsection (a) of this section shall consist of 13 members elected on a partisan basis. The Chairman and 4 members shall be elected at large in the District, and 8 members shall be elected 1 each from the 8 election wards established, from time to time, under Chapter 13 of this title. The term of office of the members of the Council shall be 4 years, except as provided in paragraph (3) of this subsection, and shall begin at noon on January 2nd of the year following their election.

(2) In the case of the first election held for the office of member of the Council after January 2, 1975, not more than 2 of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to 1 less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after January 2, 1975, the Chairman and 2 members elected at large and 4 of the members elected from election wards shall serve for 4-year terms; and 2 of the at-large members and 4 of the members elected from election wards shall serve for 2-year terms. The members to serve the 4-year terms and the members to serve the 2-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such 4-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d)(1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such

ward to fill such vacancy on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the Office of Mayor, and if the Chairman becomes a candidate for the Office of Mayor to fill such vacancy, the Office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise be held under the provisions of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than 3 members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (1973 Ed., § 1-141; Dec. 24, 1973, 87 Stat. 785, Pub. L. 93-198, title IV, § 401; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(2).)

Charter provisions. — This section of the D.C. Code is § 401 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorgani-

zation Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to restrictions on political activities by District employees, see 5 U.S.C. § 7324.

As to use of official mail by elected officials, see Chapter 17 of this title.

Section references. — This section is referred to in §§ 1-205, 1-232, 1-294, 1-603.1, 1-1321, 1-1502, 1-1601, 1-2502, 2-102, 31-1502, 31-2002, 31-2852, 47-802, and 47-1401.

Party limitations for at-large positions constitutional. — Provisions of this section limiting the number of candidates which a political party can nominate for at-large positions on the Council and limiting the number of candidates of any 1 political party serving at large does not work a deprivation of the First

Amendment rights of members of a political party. *Hechinger v. Martin*, 411 F. Supp. 650 (D.D.C. 1976), *aff'd*, 429 U.S. 1030, 97 S. Ct. 721, 50 L. Ed. 2d 742 (1977).

Terms of office are staggered to ensure smooth transitions in administration. *Barry v. District of Columbia Bd. of Elections & Ethics*, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

Cited in *Dulcan v. Martin*, 64 F.R.D. 327 (D.D.C. 1974); *District of Columbia v. Catholic Univ. of Am.*, App. D.C., 397 A.2d 915 (1979); *McClough v. United States*, App. D.C., 520 A.2d 285 (1987); *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

§ 1-222. Definitions.

(a) "Council" shall mean the Council of the District of Columbia.

(b) "Legislative duties" shall include the responsibilities of each member of the Council in the exercise of such member's functions as a legislative representative, including but not limited to: Everything said, written or done during legislative sessions, meetings, or investigations of the Council or any committee of the Council, and everything said, written, or done in the process of drafting and publishing legislation and legislative reports.

(c) "Threatening letter or communication" shall mean any letter or communication which reasonably indicates an earnest intention or determination to inflict injury upon someone or something of value. (1973 Ed., § 1-141a; June 8, 1976, D.C. Law 1-65, § 2, 22 DCR 7150.)

Legislative history of Law 1-65. — Law 1-65 was introduced in Council and assigned Bill No. 1-34, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on January 27, 1976 and February 24, 1976, respectively. Signed by the Mayor on March 22, 1976, it was assigned Act No. 1-97 and trans-

mitted to both Houses of Congress for its review.

Cited in *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *Gross v. Winter*, 876 F.2d 165 (D.C. Cir. 1989); *Brewer v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 953 F. Supp. 406 (D.D.C. 1997).

§ 1-223. Legislative immunity.

For any speech or debate made in the course of their legislative duties, the members of the Council shall not be questioned in any other place. (1973 Ed., § 1-141b; June 8, 1976, D.C. Law 1-65, § 3, 22 DCR 7151.)

Legislative history of Law 1-65. — See note to § 1-222.

Scope of immunity. — Councilmember was not granted absolute immunity from suit regarding personnel decisions made in her administrative function of dealing with her staff. *Gross v. Winter*, 692 F. Supp. 1420 (D.D.C. 1988), *aff'd*, 876 F.2d 165 (D.C. Cir. 1989).

This section is not broader than the Speech or Debate Clause of the Constitution, thus a council member does not enjoy absolute immunity to

common law claims on the basis of this section. *Gross v. Winter*, 876 F.2d 165 (D.C. Cir. 1989).

Conduct outside course of legislative duties. — Conduct described raised a question of fact as to whether council member acted outside of the legislative sphere by seeking to influence members of the executive branch with respect to their decision not to issue building permits. *Dominion Cogen, D.C., Inc. v. District of Columbia*, 878 F. Supp. 258 (D.D.C. 1995).

Introduction of legislation to abolish

Lottery Board protected. — Under this provision, city council members were immune from a claim for damages for introduction of two bills that would have abolished the Lottery Board. *Brewer v. District of Columbia Fin. Responsi-*

bility & Mgt. Assistance Auth., 953 F. Supp. 406 (D.D.C. 1997).

Cited in *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

§ 1-224. Obstruction of Council proceedings and investigations; penalty.

Whoever, corruptly or by threat or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before the Council, or in connection with any inquiry or investigation being had by the Council, or any committee of the Council, or any joint committee of the Council; or whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or whoever willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of a subpoena lawfully issued by the Council, or any committee of the Council; or whoever, corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before the Council, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by the Council, or any committee of the Council, or any joint committee of the Council; shall be fined not more than \$2,000 or imprisoned not more than 2 years, or both. (1973 Ed., § 1-141c; June 8, 1976, D.C. Law 1-65, § 4, 22 DCR 7151.)

Legislative history of Law 1-65. — See note to § 1-222.

Wrongful discharge. — Violation of this section and District of Columbia case law set forth a clear public policy, the violation of which creates a wrongful discharge cause of action. *Carl v. Children's Hosp.*, App. D.C., 657 A.2d 286 (1995), rev'd on other grounds, App. D.C., 702 A.2d 159 (1997).

The trial court erroneously dismissed a

nurse's wrongful discharge lawsuit against a hospital that claimed that the hospital violated the clear public policy set forth in this section by discharging the nurse in retaliation for her testimony before the D.C. Council. *Carl v. Children's Hosp.*, App. D.C., 702 A.2d 159 (1997).

Cited in *Freas v. Archer Servs., Inc.*, App. D.C., 716 A.2d 998 (1998); *Washington v. Guest Serv., Inc.*, App. D.C., 718 A.2d 1071 (1998).

§ 1-225. Qualifications for holding office [Charter Provision].

No person shall hold the office of member of the Council, including the Office of Chairman, unless he: (1) Is a qualified elector; (2) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated; (3) has resided and been domiciled in the District for 1 year immediately preceding the day on which the general or special election for such office is to be held; and (4) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person,

while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, § 1-226(c). (1973 Ed., § 1-142; Dec. 24, 1973, 87 Stat. 786, Pub. L. 93-198, title IV, § 402.)

Charter provisions. — This section of the D.C. Code is § 402 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Domicile and residency. — Candidacy of an individual who had spent part of the year prior to the election in a federal prison outside of the District was not precluded by the residency and/or domicile provisions of this section. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 611 A.2d 529 (1992).

§ 1-226. Compensation [Charter Provision].

(a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under § 5332 of Title 5 of the United States Code. On and after the end of the 2-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith. (1973 Ed., § 1-143; Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 403.)

Charter provisions. — This section of the D.C. Code is § 403 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Section references. — This section is referred to in §§ 1-113, 1-225, and 1-602.2.

References in text. — “This Act,” referred to in subsection (a) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Request for Congressional action. — Pursuant to § 5 of D.C. Law 10-168 and § 5 of D.C. Law 10-225 the Council requested that the United States Congress enact legislation to repeal subsection (c) of this section.

§ 1-227. Powers [Charter Provision].

(a) Subject to the limitations specified in §§ 1-206, 1-207, 1-233, and 47-313, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within 10 calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of § 1-233(c). If the Mayor shall disapprove such act, he shall, within 10 calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within 10 calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of § 1-233(c) unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law. If, within 30 calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of § 1-233(c).

(f) In the case of any budget act adopted by the Council pursuant to § 47-304 and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such 10-day period, return a copy of the act and statement with his objections to the Council. If, within 30 calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any

case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States. In the case of any budget act for a fiscal year which is a control year (as defined in § 47-393(4)), this subsection shall apply as if the reference in the second sentence to "ten-day period" were a reference to "five-day period" and the reference in the third sentence to "thirty calendar days" were a reference to "5 calendar days." (1973 Ed., § 1-144; Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 404; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(f)(2).)

Charter provisions. — This section of the D.C. Code is § 404 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to certain delegated functions and functions of certain agencies, see § 1-212.

As to legislative immunity, see § 1-223.

As to authority of Council over elections, see § 1-1307.

As to open meetings and availability of written transcripts, see § 1-1504.

As to publication in Municipal Code of Regulations in nature of law or municipal ordinance, see § 1-1602.

Section references. — This section is referred to in §§ 1-212, 1-282, 1-1181.5a, 1-1195.1, 1-1320, 1-2207.1, 2-603, 5-102, 5-412.3, 8-166, 9-603, 9-701, 9-1101, 31-2001, 35-122, 35-2702, 40-151, 47-392.2, and 47-392.8.

Emergency act amendments. — For temporary enactment of reorganization plan to consolidate all psychiatric services provided to inmates at the D.C. Jail and the Lorton Correctional Facility within the DOC, see § 3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1997 (D.C. Act 12-57, March 31, 1997, 44 DCR 2226), and see § 3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1997 (D.C. Act 12-201, December 10, 1997, 44 DCR 7600).

For temporary transfer of the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections, see § 2 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1997 (D.C. Act 12-57, March 31, 1997, 44 DCR 2226), §§ 2-3 of the

Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1997 (D.C. Act 12-201, December 10, 1997, 44 DCR 7600), and §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1998 (D.C. Act 12-510, November 10, 1998, 45 DCR 8149).

Section 5 of D.C. Act 12-57 provided for the application of the act.

Section 5 of D.C. Act 12-510 provides for the application of the act.

For temporary reorganization of the Department of Human Services to transfer the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections, see §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1998 (D.C. Act 12-510, November 10, 1998, 45 DCR 8149), and §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1999 (D.C. Act 13-8, February 8, 1999, 46 DCR 2313).

Section 5 of D.C. Act 13-8 provides for the application of the act.

Legislative history of Law 11-214. — Law 11-214, the "Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-805. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 9, 1996, it was assigned Act No. 11-392 and transmitted to both Houses of Congress for its review. D.C. Law 11-214 became effective on April 9, 1997.

Legislative history of Law 12-80. — Law 12-80, the "Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-444. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the

Mayor on December 22, 1997, it was assigned Act No. 12-236 and transmitted to both Houses of Congress for its review. D.C. Law 12-80 became effective on March 24, 1998.

Legislative history of Law 12-214. — Law 12-214, the "Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1998," was introduced in Council and assigned Bill No. 12-799. The Bill was adopted on the first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-519 and transmitted to both Houses of Congress for its review. D.C. Law 12-214 became effective on April 13, 1999.

Legislative history of Law 12-256. — Law 12-256, the "Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Act of 1998," was introduced in Council and assigned Bill No. 12-452, which was referred to the Committee on the Judiciary. The Bill was adopted on the first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-606 and transmitted to both Houses of Congress for its review. D.C. Law 12-256 became effective on April 20, 1999.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on the first and second readings on December 1, 1998 and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

References in text. — "This Act," referred to in subsection (a) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Waiver of Congressional review for certain revenue bond acts. — Section 136(a) of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that § 602(c) of the Self-Government Act (Pub. L. 93-198) shall not apply to certain acts authorizing the issuance of revenue bonds. Section 136(b) of H.R. 3067 provided that the subject revenue bond acts shall take effect on the date of enactment of the act. Pub. L. 99-190 was approved Dec. 19, 1985. The revenue bond acts subject to waiver of review, set forth in § 136(c) of H.R. 3067, are The Georgetown University Higher Education Facilities Revenue Bond Act of 1985 (D.C. Law 6-75), The Sibley Memorial Hospital Revenue Bond Act of 1985 (D.C. Law 6-70), The

Forrest Marbury House Project Revenue Bond Act of 1985 (D.C. Law 6-86), The American University Revenue Bond Act of 1985 (D.C. Law 6-78), and The George Washington University Revenue Bond Act of 1985 (D.C. Law 6-79).

Section 2 of Pub. L. 99-216 also waived Congressional review for D.C. Laws 6-75 and 6-70, providing that they take effect on the date of enactment of the public law, which was approved Dec. 26, 1985.

Section 1 of Pub. L. 99-242 amended § 2 of Pub. L. 99-216 to include also D.C. Laws 6-78 and 6-79. Section 2 provided that they should take effect as if included in Pub. L. 99-216, with certain restrictions.

Exchange of property. — Act of February 26, 1981, D.C. Law 3-116, authorized the Mayor to transfer the Old Benning Road Elementary School to the Washington Metropolitan Area Transit Authority in exchange for the Brook Mansion and basic renovation thereof.

Act of February 24, 1984, D.C. Law 5-49, authorized the Mayor to exchange parcel 260/13, owned by the District of Columbia, for parcel 261/12, owned by the Potomac Electric Power Company (Ward 8).

Act of March 14, 1984, D.C. Law 5-68, authorized the Mayor to convey, by sale or exchange, in whole or in part, to the Washington Metropolitan Area Transit Authority certain real property owned in fee simple by the District for municipal use in Squares 3831 and 3828 and Parcel 123/56.

Conveyance of parcel 131/220. — Section 2 of D.C. Law 6-164 provided that the Mayor is authorized to convey that portion of parcel 131/220 used by the Washington Metropolitan Area Transit Authority for parking lot and access road purposes, and may execute a deed or deeds for the conveyance of the real property.

Establishment and elimination of building restriction lines. — Section 2 of D.C. Law 8-8 provided that (1) The building restriction line in Lot 26 in Square 1853 on the north side of Reno Road, N.W., as shown on the Surveyor's plat filed under S.O. 87-394, is unnecessary for public purposes and it was ordered eliminated; and (2) A building restriction line in Lot 26 in Square 1853 on the south side of Ingomar Street, N.W., as shown on the Surveyor's plat filed under S.O. 87-394, is necessary for public purposes and it was ordered established.

Section 3 of D.C. Law 8-8 provided that following June 16, 1989, the Surveyor shall record a copy of this act and the Surveyor's plat filed under S.O. 87-394.

Temporary Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections. — Section 2 of D.C. Law 11-214 provides for the temporary reorganization, pursuant to (b), of the Department of Human Services in transferring the Bureau of Correctional Services from the De-

partment of Human Services to the Department of Corrections as set forth in section 3 of D.C. Law 11-214.

Section 5(b) of D.C. Law 11-214 provides that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-80 provides for the temporary reorganization, pursuant to subsection (b) of this section, of the Department of Human Services in transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections as set forth in section 3 of D.C. Law 12-80.

Section 5(b) of D.C. Law 12-80 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-214 provides for the temporary reorganization, pursuant to subsection (b) of this section, of the Department of Human Services in transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections as set forth in § 3 of D.C. Law 12-214.

Section 5(b) of D.C. Law 12-214 provided that the act shall expire after 225 days of its having taken effect.

Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections. — Section 2 of D.C. Law 12-256 provides for the reorganization, pursuant to subsection (b) of this section, of the Department of Human Services in transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections as set forth in § 3 of D.C. Law 12-256.

Transfer of the Office of the Surveyor. — Sections 5002 through 5004 of D.C. Law 12-261 provided that pursuant to this section, the Office of the Surveyor, in the Department of Public Works ("DPW"), established by Reorganization Plan No. 2 of 1982, effective December 8, 1982, and transferred to DPW under Reorganization Plan No. 4 of 1983, effective March 1, 1984, is hereby transferred to the Department of Consumer and Regulatory Affairs ("DCRA"). The purpose of the transfer is to provide for the more efficient operation of the Office of the Surveyor and the development process in the District of Columbia. All of the duties and functions assigned or delegated to the existing office of the Surveyor in DPW, are hereby transferred to the Office of the Surveyor in DCRA, along with all positions, property, records, and unexpended balances of appropriation, allocations and other funds available or to be made available relating to the above functions.

Rules Resolution for the Council of the District of Columbia Council Period XI. — Pursuant to Resolution 11-1, effective January 3, 1995, the Council provided rules of organiza-

tion and procedure for the Councils of the District of Columbia during Council Period XI.

Rules Resolution for the Council of the District of Columbia, Council Period XI, Federal-Aid Highway Contract Review Amendment Resolution of 1996. — Pursuant to Resolution 11-368, effective June 4, Council amended the Rules Resolution for the Council of the District of Columbia, Council Period XI to permit proposed federal-aid highway contracts in excess \$1 million to be transmitted to the Council for review during a Council recess, to permit the time period for Council review of a proposed federal-aid highway contract in excess of \$1 million to begin on the day following its receipt by the Council and to permit the establishment of a procedure to permit the Council to complete its review of proposed federal-aid highway contracts in excess of \$1 million upon approval the Department of Public Works' annual capital program.

Rules Resolution for the Council of the District of Columbia, Council Period XI, Contract Review Emergency Amendment Resolution of 1996. — Pursuant to Resolution 11-476, effective July 17, Council amended, on an emergency basis, the Rules Resolution for the Council of the District of Columbia, Council Period XI to permit specified proposed contracts in excess of \$1 million to be transmitted to the Council for review during a Council recess, and to permit the time period for Council review of specified proposed contracts in excess of \$1 million to begin on the day following its receipt by the Council.

Rules Resolution for the Council of the District of Columbia, Council Period XII, and the MOU on the President's Plan Resolution of 1997. — Pursuant to Resolution 12-047, effective Mar. 4, 1997, the Rules Resolution for Council Period XII, and the MOU on the President's Plan Resolution, were adopted.

Authority Recommendation Procedure and Fiscal Impact Rules Amendment Resolution of 1997. — Pursuant to Resolution 12-100, effective May 6, 1997, the Authority Recommendation Procedure and Fiscal Impact Rules Amendment Resolution of 1997 was adopted.

Legislative records. — The District of Columbia Council simply has imposed a duty on its Secretary to maintain accurate and up-to-date records under §§ 441(a), 445, and 446 of the Rules of Organization and Procedure for the Council of the District of Columbia and has thereby neither expressly directed a means of formal verification nor established a precondition to the authoritative passage of public laws. *German v. United States*, App. D.C., 525 A.2d 596, cert. denied, 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358 (1987).

Subsection (a) of this section distinguishes between transferred legislative

power and newly conferred legislative power. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Ongoing emergency requires use of "permanent" legislative process. — The Council must follow the "permanent" legislative route whenever it concludes that emergency circumstances demand legislative protection beyond a 90-day emergency act. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Council's emergency power is exception to usual legislative process. — Congress intended the Council's emergency power to be an exception to the fundamental legislative process requiring a 2nd reading and congressional layover; it is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Successive emergency acts authorized in certain circumstances. — Where the Council has determined that emergency legislation should remain in effect for more than ninety days and taken all reasonable actions to assure that its legislation, in a form enacted after two readings, is presented to Congress for review without unreasonable delay, the Council acts within its legislative authority under the Home Rule Act when it enacts a successive substantially similar emergency act in order to maintain the status quo during the congressional review period. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

When the Council has not bypassed the second reading and congressional review requirements, the ninety-day limitation on the Council's authority to enact an emergency act is properly viewed as applying only to the act, and not to its substance, which may be addressed in another act. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

Repeal of existing legislation. — The plenary legislative power given the Council includes the authority to repeal existing legislation, whether or not derived from an initiative. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Amendment of acts approved by referendum or adopted by initiative. — The plain effect of the language of § 1-285 is to equate acts approved by referendum or adopted by initiative with any other act of the Council. Nothing in the statute reflects an intent to elevate initiatives, insofar as amendment is concerned, to the plane of the charter itself, by requiring approval of the electorate before either can be amended. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Powers concerning streets. — Congress did not intend, by the language of § 1-233, to

revoke the District government's traditional authority to close streets and transfer title to streets in the District, even where title is vested in the United States. *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Legislative power properly exercised. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily includes the function of enacting police regulations pursuant to § 1-319 and gun control measures pursuant to § 1-321. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Removal of authorization for funded project. — The Council, pursuant to its powers of ordinary legislation, can remove the substantive authorization for a funded project; but, to the extent that Congress has appropriated funds for the project, the Council can halt further expenditure through the requirements of the budget process, even though the project has been formally deauthorized. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Authority to seek review of Contract Appeals Board decisions. — Council deliberately chose to limit the Mayor's and the Corporation Counsel's authority in the procurement area and, thereby, conferred on the Department of Administrative Services the exclusive authority to seek judicial review of Contract Appeals Board decisions against the District. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Emergency legislation in compliance with Council Rules. — Emergency legislation signed by Mayor on April 1, 1995 held to comply with Council Rules 412, 425 and 426. *Lampkin v. District of Columbia*, 886 F. Supp. 56 (D.D.C. 1995).

Cited in *District of Columbia v. Catholic Univ. of Am.*, App. D.C., 397 A.2d 915 (1978); *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527 (D.C. Cir. 1980); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *ITEL Corp. v. District of Columbia*, App. D.C., 448 A.2d 261, cert. denied, 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932 (1982); *Silverman v. Barry*, 727 F.2d 1121 (D.C. Cir. 1984); *Georgetown Entertainment Corp. v. District of Columbia*, App. D.C., 496 A.2d 587 (1985); *United States v. Alston*, 118 WLR 819 (Super. Ct.); *United States v. Barnes*, 118 WLR 1709 (Super. Ct.); *United States v. Jones*, 118 WLR 1837 (Super. Ct.); *Atkinson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 597 A.2d 863 (1991); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Colbert v. United States*, App. D.C., 601 A.2d 603 (1992); *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992); *District of Columbia v. Amer-*

ican Fed'n of Gov't Employees, App. D.C., 619 A.2d 77 (1993), cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993).

§ 1-227.1. Independence established and recognized.

(a) The Council of the District of Columbia ("Council") administratively establishes itself, as authorized in title IV of the District of Columbia Self-Government and Governmental Reorganization Act, as an independent and coordinate branch of the District of Columbia government.

(b) The Council recognizes the principle of separation of powers in the structure of the District of Columbia government.

(c) The Council shall, following receipt of the report of the study committee established by § 3, adopt such acts and resolutions to implement the organizational and administrative independence of the Council. (July 24, 1982, D.C. Law 4-127, § 2, 29 DCR 2396.)

Legislative history of Law 4-127. — Law 4-127, the "Council of the District of Columbia Independence Act of 1982," was introduced in Council and assigned Bill No. 4-240, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on June 1, 1982, it was assigned Act No. 4-192 and transmitted to both Houses of Congress for its review.

References in text. — "Section 3", referred to in subsection (c) of this section, is § 3 of D.C. Law 4-127.

Study committee established. — Section 3 of D.C. Law 4-127 provided for the establishment of a 5-member study committee to study the organizational and administrative independence of the Council as a coordinate branch of the District of Columbia government. Section 4 of D.C. Law 4-127 outlined the responsibilities of the study committee.

Cited in *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992); *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 1-228. Chairman [Charter Provision].

(a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council. (1973 Ed., § 1-145; Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 411.)

Charter provisions. — This section of the D.C. Code is § 411 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorgani-

zation Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

§ 1-229. Acts; resolutions; requirements for quorum [Charter Provision].

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes. Each proposed act (other than an act to which § 47-304 applies) shall be read twice in substantially the same form, with at least 13 days intervening between each reading. Upon final adoption by

the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed 90 days. Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove proposed actions of a kind historically or traditionally transmitted by the Mayor, the Board of Elections, Public Service Commission, Armory Board, Board of Education, the Board of Trustees of the University of the District of Columbia, or the Convention Center Board of Directors to the Council pursuant to an act. Such resolutions must be specifically authorized by that act and must be designed to implement that act.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings. (1973 Ed., § 1-146; Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 412; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(c).)

Charter provisions. — This section of the D.C. Code is § 412 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to codification and publication of acts and resolutions, see Chapter 16 of this title.

As to enrollment of acts and resolutions, see § 1-1604.

Section references. — This section is referred to in §§ 1-233, 1-1532, 1-1602, and 1-1904.

Temporary legislation. — Pursuant to (a), the Council often adopts temporary legislation in conjunction with emergency legislation which takes effect after a period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), as provided in § 1-233(c). Such legislation carries an expiration provision limiting its application, usually, to 225 days. Amendatory temporary legislation is treated under the code section affected; following this, it is listed in the D.C. Laws Not Codified table found in Volume 11.

Emergency legislation. — Pursuant to (a), the Council adopts emergency legislation which takes effect upon its enactment (approval by the Mayor, or in the event of veto by the Mayor,

override of the veto by the Council) and which remain in effect for no longer than 90 days. Amendatory emergency acts are treated under the Code section affected; otherwise the act is listed in the Emergency Act Table found in Volume 11.

Legislative history of Law 8-11. — Law 8-11 was introduced in Council and assigned Bill No. 8-179. The Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-27 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-13. — Law 8-13 was introduced in Council and assigned Bill No. 8-238. The Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-85. — Law 8-85 was introduced in Council and assigned Bill No. 8-469. The Bill was adopted on first and second readings on November 14, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-135 and transmitted to both Houses of Congress for its review.

References in text. — "This Act," referred to in subsection (a) of this section, is the District of Columbia Self-Government and Govern-

mental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Fiscal year. — See note to § 1-205.

D.C. Law Review. — For article, "The District of Columbia's response to homelessness: Depending on the kindness of strangers," see 2 D.C. L. Rev. 47 (1993).

Council's emergency power is exception to usual legislative process. — Congress intended the Council's emergency power to be an exception to the fundamental legislative process requiring a 2nd reading and congressional layover; it is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

The proponents of the amendment authorizing emergency legislation cannot be understood to have compromised the 2nd reading requirement when they proposed the two-thirds voting requirement for emergency acts; and the later addition of the 30 legislative-day congressional layover cannot be said to have imposed such a burdensome requirement that its very adoption manifests an eventual congressional decision to tolerate an unlimited number of consecutive, substantially identical emergency acts by the Council, as a way of overcoming that burden. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Ongoing emergency requires use of "permanent" legislative route. — The Council must follow the "permanent" legislative route whenever it concludes that emergency circumstances demand legislative protection beyond a 90-day emergency act. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

When the Council enacts legislation in response to emergency circumstances, as authorized by subsection (a) of this section, it has no authority to pass another substantially identical emergency act in response to the same emergency when the 1st emergency act expires. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980); *Maryland v. Barry*, 604 F. Supp. 495 (D.D.C. 1985).

Duration of emergency acts. — Subsection (a) of this section contemplates that the life of an emergency act is to be measured prospectively from the date of enactment. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

Emergency act introduced 16 months before declaration of an emergency. — Even though Emergency Act, D.C. Act 8-226, was introduced 16 months before the declaration of an emergency, and the sponsors announced their intention to pass an emergency

act a full 100 days before the Council fully did so, such facts were insufficient to invalidate the Council's judgment that immediate action was necessary to stem the expenditure of funds in excess of appropriations caused by the shelter legislation. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Court has authority to review Council's determination of emergency circumstances. — The court does have authority to review the Council's determination that emergency circumstances exist requiring specific legislation. *American Fed'n of Gov't Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

But scope of review limited to determination of facial validity of resulting act. — In reviewing a legislatively declared emergency, the court seeks only to assure that the act is facially valid, i.e., consistent with Council legislative authority in partnership with Congress. *American Fed'n of Gov't Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Approval of individual contracts. — This section does not allow the District of Columbia Council to require approval of certain individual contracts by means of a resolution of the Council. *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

Individual procurement contracting decisions of the executive branch are not "actions of a kind historically or traditionally transmitted by the Mayor . . . to the Council pursuant to an act"; therefore, the Council of the District of Columbia has not been empowered by subsection (a) of this section to erect its own mechanism of individualized contract review by use of its resolution authority. *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992).

Reason for two-thirds requirement of subsection (a). — The two-thirds requirement under subsection (a) of this section was directed fundamentally against the Council's precipitous use of emergency power in any situation; a two-thirds vote is required even for passage of a single emergency act. *District of Columbia v. Washington Home Ownership Council, Inc.*, App. D.C., 415 A.2d 1349 (1980).

Effect of emergency repealer act. — There is nothing in either the straightforward and clear provisions of the legislative processes established by the Home Rule Act which would warrant a holding that by passage of an emergency repealer act, the Council permanently and without more can deprive an act of legal effect. *Atkinson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 597 A.2d 863 (1991).

Legislative records. — The District of Columbia Council simply has imposed a duty on its Secretary to maintain accurate and up-to-date records under §§ 441(a), 445 and 446 of the Rules of Organization and Procedure for the Council of the District of Columbia (see

§ 1-227), and has thereby neither expressly directed a means of formal verification nor established a precondition to the authoritative passage of public laws. *German v. United States*, App. D.C., 525 A.2d 596, cert. denied, 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358 (1987).

Illegal Drug Zone Emergency Act unconstitutional. — The Illegal Drug Zone Emergency Act (D.C. Act 8-19) is unconstitutional because it allows arrest without evidence of any illegal purpose. *United States v. Kennedy*, 118 WLR 873 (Super. Ct. 1990).

Enforcement of Temporary Curfew Emergency Act restrained. — The enforcement of the Temporary Curfew Emergency Act (D.C. Act 8-20) is restrained since the Act is unconstitutionally overbroad. *Waters v. Barry*, No. 89 Civ. 707 (D.D.C., April 24 1990).

Preliminary injunction against enforcement of Medical Health Care Facilities Emergency Act. — The enforcement of § 2(a) of the Interference with Medical Health Care Facilities Emergency Act (D.C. Act 8-113) is preliminarily enjoined since the Act violates the First and Fourteenth Amendments because it is both vague and overbroad. *Mahoney v. District of Columbia*, No. 89 Civ. 3136 (D.D.C. January 8, 1990).

Council's authority to enact emergency criminal legislation. — Because the first emergency act expired before completion of prosecution of defendant, without any authority to sustain the ongoing prosecution, the prosecution of the defendant on challenged counts of the indictment is abated. *United States v. Alston*, No. 89 Crim. 4542 (Super. Ct., February 6, 1990), appeal docketed, Nos. 90-167 and 90-168 (D.C., March 30, 1990).

Continuation of emergency conditions does not justify enactment of second or successive acts. The second emergency act amending District of Columbia criminal is invalid. *United States v. Anderson*, 118 WLR 491 (Super. Ct., May 1, 1990).

Applicability of federal savings clause to emergency legislation. — Under D.C. Code, § 49-301, the general savings provision in 1 U.S.C. § 109 applies in the District of Columbia and prevents the abatement of prosecutions begun, but not completed, before the expiration of emergency criminal legislation. *United States v. Jones*, No. 89-4106 (Super. Ct., April 3, 1990).

The federal savings provision of 1 U.S.C. § 109 applies to emergency acts of the Council, and preserved defendant's prosecution for offenses under expired emergency criminal legislation. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

Successive emergency acts are authorized in certain circumstances. — When the Council has not bypassed the second reading and congressional review requirements, the ninety-day limitation on the Council's authority to enact an emergency act is properly viewed as applying only to the act, and not to its substance, which may be addressed in another act. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

In the absence of a statutory prohibition and a reasonable expectation that permanent legislation could become effective within the lifetime of an emergency act, the Council did not exceed its emergency legislative authority in adopting a second emergency act. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

Where the Council has determined that emergency legislation should remain in effect for more than ninety days, and taken all reasonable actions to assure that its legislation, in a form enacted after two readings, is presented to Congress for review without unreasonable delay, the Council acts within its legislative authority under the Home Rule Act when it enacts a successive substantially similar emergency act in order to maintain the status quo during the congressional review period. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

The imperative to allow a second successive emergency act is clear, since Congress has doubled the length of congressional review for amendments to Titles 22, 23, and 24, and the District government can no longer arrange its procedures to avoid a statutory gap. *United States v. Alston*, App. D.C., 580 A.2d 587 (1990).

Cited in *Silverman v. Barry*, 727 F.2d 1121 (D.C. Cir. 1984); *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *United States v. Kennedy*, 118 WLR 873 (Super. Ct. 1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *United States v. Jones*, 118 WLR 1837 (Super. Ct. 1990); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), aff'd, 23 F.3d 507 (D.C. Cir. 1994); *District of Columbia v. American Fed'n of Gov't Employees*, App. D.C., 619 A.2d 77 (1993), cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993); *Lampkin v. District of Columbia*, 886 F. Supp. 56 (D.D.C. 1995); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995); *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

§ 1-230. Construction of terms set forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise:

(1) Words importing the singular include and apply to several persons, parties, or things.

(2) Words importing the plural include the singular.

(3) With regard to resolutions, words importing 1 gender include and apply to the other gender as well.

(4) Words used in the present tense include the future as well as the present.

(5) The words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(6) “Officer” includes any person authorized by law to perform the duties of the office.

(7) “Signature” or “subscription” includes a mark when the person making it intended that mark as such.

(8) “Oath” includes affirmation, and “sworn” includes affirmed.

(9) “Writing” includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifold, or otherwise. (1973 Ed., § 1-146a; Sept. 23, 1975, D.C. Law 1-17, § 2, 22 DCR 1990; June 4, 1982, D.C. Law 4-111, § 2(b), 29 DCR 1684.)

Cross references. — As to general rules of construction, see Chapter 2 of Title 49.

Section references. — This section is referred to in § 1-2483.

Legislative history of Law 1-17. — Law 1-17 was introduced in Council and assigned Bill No. 1-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 29, 1975 and May 13, 1975, respectively. Signed by the Mayor on June 19, 1975, it was assigned Act No. 1-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-111. — Law 4-111 was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982

and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Consideration of legislative history. — Where there is a decided lack of ambiguity in a statute, it is inappropriate for a reviewing court to consider the statute’s legislative history; if the statute is clear and unambiguous on its face, the motivation of the legislators that enacted it is of no concern to a court that is called upon to enforce it. *Burgess v. United States*, App. D.C., 681 A.2d 1090 (1996).

Same-sex marriages. — Neither the Gender Rule of Construction, D.C. Code § 49-203 nor this section requires recognition of same-sex marriages in the District. *Dean v. District of Columbia*, App. D.C., 653 A.2d 307 (1995).

§ 1-231. Enacting and resolving clauses in acts and resolutions; numbering of sections.

(a) Each act of the Council of the District of Columbia shall have an enacting clause only in the 1st section of each act and such enacting clause shall be in the following form: “Be it enacted by the Council of the District of Columbia,”.

(b) Each resolution of the Council of the District of Columbia shall have a resolving clause in the following form: “Resolved, by the Council of the District of Columbia,”.

(c) Each section of each act or resolution shall be numbered consecutively. (1973 Ed., § 1-146b; Sept. 23, 1975, D.C. Law 1-17, § 3, 22 DCR 1991.)

Legislative history of Law 1-17. — See note to § 1-230.

§ 1-232. Definition of terms set forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise:

(1) The term “Council” means the Council of the District of Columbia established under § 1-221.

(2) The term “Mayor” means the Mayor of the District of Columbia established under § 1-241.

(3) The term “Act” means an Act of the Congress.

(4) The term “act” means an act of the Council. (1973 Ed., § 1-146c; Sept. 23, 1975, D.C. Law 1-17, § 4, 22 DCR 1992.)

Legislative history of Law 1-17. — See note to § 1-230.

§ 1-233. Limitations.

(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

(1) Impose any tax on property of the United States or any of the several states;

(2) Lend the public credit for support of any private undertaking;

(3) Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) Enact any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts);

(5) Impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms “individual” and “resident” to be understood for the purposes of this paragraph as they are defined in § 47-1801.4);

(6) Enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in § 5-405, and in effect on December 24, 1973;

(7) Enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) Enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the

United States Attorney or the United States Marshal for the District of Columbia;

(9) Enact any act, resolution, or rule with respect to any provision of Title 23 (relating to criminal procedure), or with respect to any provision of any law codified in Title 22 or 24 (relating to crimes and treatment of prisoners), or with respect to any criminal offense pertaining to articles subject to regulation under Chapter 32 of Title 22 during the 48 full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office; or

(10) Enact any act, resolution, or rule with respect to the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.1(a).

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

(c)(1) Except acts of the Council which are submitted to the President in accordance with Chapter 11 of Title 31, United States Code, any act which the Council determines, according to § 1-229(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act and except as provided in § 47-322(c) and § 47-328(d)(1) the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate, a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2) of this subsection, such act shall take effect upon the expiration of the 30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law, subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of § 1-207, except subsections (d), (e), and (f) of such section, shall apply with respect to any joint resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any act codified in Title 22, 23, or 24 of the District of Columbia Code, such

act shall take effect at the end of the 60-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless, during such 60-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 60-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 60-day period shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of § 1-207, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.

(3) The Council shall submit with each act transmitted under this subsection an estimate of the costs which will be incurred by the District of Columbia as a result of the enactment of the act in each of the first 4 fiscal years for which the act is in effect, together with a statement of the basis for such estimate. (1973 Ed., § 1-147; Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 602; Sept. 7, 1976, 90 Stat. 1220, Pub. L. 94-402; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 17; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(d)-(g); Apr. 17, 1995, 109 Stat. 107, 142, Pub. L. 104-8, §§ 108(b)(2), 301(d)(1).)

Cross references. — As to limitation on Council to repeal or alter any provision of subchapter III of Chapter 73 of Title 5, United States Code, relating to political activity restrictions, see § 1-208.

Section references. — This section is referred to in §§ 1-204, 1-205, 1-227, 1-285, 1-1320, 1-1326, 5-1015, 6-228, 6-320, 6-1985, 6-2076, 11-2609, 16-901, 36-345, 43-1680, 43-1711, 47-322, 47-328, 47-330.1, 47-334, 47-392.2, 47-392.3, 47-398.1, 47-1401, 47-1806.4, and 49-405.

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

“Title IV of this Act,” referred to in subsection (c)(1) of this section, consists of §§ 401 to 495 of the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

“Chapter 11 of Title 31, United States Code,” referred to in the first sentence in paragraph (1) of subsection (c) of this section, was substituted for “the Budget and Accounting Act, 1921 (31 U.S.C. § 1 et seq.)” on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

Fiscal year. — See note to § 1-205.

Waiver of Congressional review for certain revenue bond acts. — Section 136(a) of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that § 602(c) of the Self-Government Act (Pub. L. 93-198)

shall not apply to certain acts authorizing the issuance of revenue bonds. Section 136(b) of H.R. 3067 provided that the subject revenue bond acts shall take effect on the date of enactment of the act. Pub. L. 99-190 was approved Dec. 19, 1985. The revenue bond acts subject to waiver of review, set forth in § 136(c) of H.R. 3067, are The Georgetown University Higher Education Facilities Revenue Bond Act of 1985 (D.C. Law 6-75), The Sibley Memorial Hospital Revenue Bond Act of 1985 (D.C. Law 6-70), The Forrest Marbury House Project Revenue Bond Act of 1985 (D.C. Law 6-86), The American University Revenue Bond Act of 1985 (D.C. Law 6-78), and The George Washington University Revenue Bond Act of 1985 (D.C. Law 6-79).

Section 2 of Pub. L. 99-216 also waived Congressional review for D.C. Laws 6-75 and 6-70, providing that they take effect on the date of enactment of the public law, which was approved Dec. 26, 1985.

Section 1 of Pub. L. 99-242 amended § 2 of Pub. L. 99-216 to include also D.C. Laws 6-78 and 6-79. Section 2 provided that they should take effect as if included in Pub. L. 99-216, with certain restrictions.

D.C. Schedule of Heights Amendment disapproved by Congress. — Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act

of 1990 (D.C. Act 8-329), signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

Borrowing of funds for arena preconstruction activities. — For provisions permitting a designated authority to borrow funds for preconstruction activities relating to Gallery Place Sports Arena, see § 47-398.1.

Application of § 301(d)(1) of Pub. L. 104-8. — Section 301(d)(2) of Pub. L. 104-8, 109 Stat. 142, provided that the amendment made by paragraph (d)(1) shall apply to Acts of the Council transmitted on or after October 1, 1995.

D.C. Law Review. — For article, "The District of Columbia's response to homelessness: Depending on the kindness of strangers," see 2 D.C. L. Rev. 47 (1993).

Intent of subsection (a)(3). — Congress intended in subsection (a)(3) of this section to withhold from local officials the authority to affect or to control decisions made by federal officials in administering federal laws that are national in scope as opposed to laws that relate solely to the District of Columbia. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Council not prohibited from legislating criminal status of specific acts. — Subsection (a)(4) of this section does not prohibit the Council from legislating as to the criminal status of specific acts. *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981).

Circumstances preventing effectiveness of act. — The only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress under subsection (c)(1) of this section or the filing of a valid referendum petition under § 1-282(b)(1). *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), aff'd, 23 F.3d 507 (D.C. Cir. 1994).

Jurisdiction of the courts. — The Council of the District of Columbia may not expand or reduce the jurisdiction of the local courts. *District of Columbia v. Group Ins. Admin.*, App. D.C., 633 A.2d 2 (1993).

Proposed initiative creating an Office of Public Advocate for Assessments and Taxation with authority to appeal tax assessments by Mayor to Superior Court and Court of Appeals did not expand the jurisdiction of the courts in violation of subsection (a)(4). *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990).

Jurisdiction of D.C. Court of Appeals. — Under subsection (a)(4) of this section, the Council of the District of Columbia is precluded from taking action to expand the jurisdiction of the District of Columbia Court of Appeals. *Cap-*

itol Hill Restoration Soc'y, Inc. v. Moore, App. D.C., 410 A.2d 184 (1979).

Commuter tax. — By adopting subsection (a)(5) of this section, Congress intended to prevent the District from enacting a commuter tax. *Bishop v. District of Columbia*, App. D.C., 401 A.2d 955 (1979), aff'd on rehearing, 411 A.2d 997, cert. denied, 446 U.S. 966, 100 S. Ct. 2943, 64 L. Ed. 2d 825 (1980).

Congress expressly and specifically withheld the Council's authority to impose a tax on the income of nonresidents. *Bishop v. District of Columbia*, App. D.C., 411 A.2d 997, cert. denied, 446 U.S. 966, 100 S. Ct. 2943, 64 L. Ed. 2d 825 (1980).

Professional tax of § 47-1808.1 is an invalid exercise of Council's legislative authority under subsection (a)(5) of this section. *Bishop v. District of Columbia*, App. D.C., 401 A.2d 955 (1979), aff'd on rehearing, 411 A.2d 997, cert. denied, 446 U.S. 966, 100 S. Ct. 2943, 64 L. Ed. 2d 825 (1980).

Income tax liability based solely on resident status. — The District of Columbia predicates individual income tax liability solely on the taxpayer's resident status and not on the source of the income. *District of Columbia v. Terris*, App. D.C., 604 A.2d 5 (1992).

Congressional intent behind subsection (a)(9) of this section was to reserve to Congress an interest in changing the criminal code for purposes of clarification and improvement and to declare a moratorium on the Council's new legislative authority while the District of Columbia Law Revision Commission proposed and Congress considered a complete revision of the District of Columbia Criminal Code. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Limitation did not extend to subject matter. — The phrase "with respect to any provision of any law codified in Title 22" in subsection (a)(9) does not mean with respect to the subject matter of any provision of Title 22. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Nor restrict local police power. — Congress did not intend the limitation in subsection (a)(9) to restrict the Council's authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

The legislative history does not suggest that in enacting this section Congress intended to deter enactment of a gun control measure or of other similar exercises of police power in accordance with past local legislative practices. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Firearms control law sustained. — The validity of the Firearms Control Regulations Act of 1975 (§ 6-2301 et seq.) was sustained under the District of Columbia Council's newly

conferred power set forth in § 1-227(a), notwithstanding the limitation in subsection (a)(9) of this section. *McIntosh v. Washington, App. D.C.*, 395 A.2d 744 (1978).

Powers concerning streets. — Congress did not intend, by the language of this section, to revoke the District government's traditional authority to close streets and transfer title to streets in the District, even where title is vested in the United States. *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Section 35-2105(b)(6), prior to 1986 amendment, did not violate Self-Government Act. — Section 35-2105(b)(6), as it appeared prior to the amendment effective March 4, 1986, did not violate the Self-Government Act by altering the civil jurisdiction of the District of Columbia Superior Court in defining its jurisdiction in automobile accident tort cases to extend only to cases where \$5,000 in medical expenses have been incurred. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

There is a clear imperative to allow a second successive emergency act since Congress has doubled the length of congressional review for amendments to Titles 22, 23, and 24, and the District government can no longer arrange its procedures to avoid a statutory gap. *United States v. Alston, App. D.C.*, 580 A.2d 587 (1990).

Effect of emergency repealer act. — There is nothing in either the straightforward and clear provisions of the legislative processes established by the Home Rule Act which would warrant a holding that by passage of an emergency repealer act, the Council permanently and without more can deprive an act of legal effect. *Atkinson v. District of Columbia Bd. of Elections & Ethics, App. D.C.*, 597 A.2d 863 (1991).

Once the act has been transmitted to Congress, the legislative process of the District insofar as the Council and Mayor are concerned is at an end. *Atkinson v. District of Columbia Bd. of Elections & Ethics, App. D.C.*, 597 A.2d 863 (1991).

An emergency repealer does not toll Congress' thirty-day consideration period, thus an act which was subject to the emergency repealer would take effect on the completion of the initial thirty-day period. *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), *aff'd*, 23 F.3d 507 (D.C. Cir. 1994).

Thirty-day congressional review period not burden on legislative process. — The 30 legislative-day congressional layover provided for in subsection (c) of this section cannot be said to have imposed such a burdensome requirement that its very adoption manifests an eventual congressional decision to tolerate an unlimited number of consecutive, substan-

tially identical emergency acts by the Council, as a way of overcoming that burden. *District of Columbia v. Washington Home Ownership Council, Inc., App. D.C.*, 415 A.2d 1349 (1980).

Congress intended the Council's emergency power to be an exception to the fundamental legislative process requiring a 2nd reading and congressional layover; it is not an alternative legislative track to be used repeatedly whenever the Council perceives an ongoing emergency. *District of Columbia v. Washington Home Ownership Council, Inc., App. D.C.*, 415 A.2d 1349 (1980).

Referendum withdraws act from congressional consideration. — In the circumstance where legislation awaiting congressional review is placed in jeopardy as a result of a referendum petition, the Home Rule Act withdraws it from congressional consideration until its fate is known. If the legislation survives the referendum, the Act ensures that Congress will have a new thirty-day period within which to consider it, and the Act, therefore, defers congressional review until after the result of the referendum is known. *Bliley v. Kelly*, 23 F.3d 507 (D.C. Cir. 1994).

Temporary repealer results in suspension of review period. — In the case of the filing of a referendum petition, the enactment of emergency and temporary repealers resulted in the suspension of the review period pending final action on the Liability Act by the District. *Bliley v. Kelly*, 23 F.3d 507 (D.C. Cir. 1994).

Failure of Congress to adopt resolution. — A new thirty-day period for congressional review of the Liability Act began the day after the result of the referendum was announced. With that announcement, Congress was on notice that, absent a congressional resolution of disapproval, the Act would take effect by operation of law on the expiration of the temporary repealer. Because Congress failed to adopt such a resolution, the Liability Act became law. *Bliley v. Kelly*, 23 F.3d 507 (D.C. Cir. 1994).

It is within District of Columbia's power to prescribe conditions for registration of motor vehicles, including purchase of out-of-state liability coverage, and to require insurance companies doing business in the District to provide certain coverage. *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986).

Local legislation decreasing work load of federal agencies not proscribed. — The ability of the Council to enact local legislation which decreases the work load of federal agencies presently charged with local responsibilities does not constitute a proscribed exercise of authority. *District of Columbia v. Greater Wash. Cent. Labor Council, App. D.C.*, 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Prohibition of discrimination in insurance. — The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Act 6-170) applies only when insurance companies are doing business within the District and is not in violation of this section. *American Council of Life Ins. v. District of Columbia*, 645 F. Supp. 84 (D.D.C. 1986).

Workmen's compensation legislation. — Nothing in the language or the legislative history of the Self-Government Act indicates Congress' intent to prohibit the District from enacting legislation concerning workmen's compensation for the private sector. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics*, 580 F.2d 695 (D.C. Cir. 1978); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *Scholtz Partnership v. District of Columbia Rental Accommodations Comm'n*, App. D.C., 427 A.2d 905 (1981); *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981); *ITEL Corp. v. District of Columbia*, App. D.C., 448 A.2d 261, cert. denied, 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932 (1982); *In re Watts*, 110 WLR 2581 (Super. Ct. 1982); *Silverman v. Barry*, 727 F.2d 1121 (D.C. Cir. 1984); *Weinberg v. Barry*, 604 F. Supp. 390 (D.D.C. 1985); *Barnes v. District of Columbia*, 611 F. Supp. 130 (D.D.C. 1985); *Washington v. United States*, App. D.C., 498 A.2d 247 (1985); *United States v. Barber*, 113 WLR 69 (Super. Ct. 1985); *In re Metro Subway Accident Referal*, 630 F. Supp. 385 (D.D.C. 1984), aff'd sub nom. *Keener v. Washington Metro. Area Transit*

Auth., 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); *Grano v. Barry*, 783 F.2d 1104 (D.C. Cir. 1986); *Potomac Elec. Power Co. v. District of Columbia Gov't*, 651 F. Supp. 907 (D.D.C. 1986); *McClough v. United States*, App. D.C., 520 A.2d 285 (1987); *District of Columbia Bd. of Elections & Ethics v. District of Columbia*, App. D.C., 520 A.2d 671 (1986); *Poe v. Noble*, App. D.C., 525 A.2d 190 (1987); *Rose v. United States*, App. D.C., 535 A.2d 849 (1987); *McConnell v. United States*, App. D.C., 537 A.2d 211 (1988); *Newspapers, Inc. v. Metropolitan Police Dept.*, App. D.C., 546 A.2d 990 (1988); *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988); *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, App. D.C., 549 A.2d 315 (1988); *Adam A. Weschler & Son v. Klank*, App. D.C., 561 A.2d 1003 (1989); *Barry v. AT & T Co.*, App. D.C., 563 A.2d 1069 (1989), rev'd sub nom. on other grounds, *Sprint Communications Co. v. Kelly*, App. D.C., 642 A.2d 106, cert. denied, 513 U.S. 916, 115 S. Ct. 294, 130 L. Ed. 2d 208 (1994); *United States v. Alston*, 118 WLR 819 (Super. Ct. 1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *United States v. Jones*, 118 WLR 1837 (Super. Ct. 1990); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991); *McMillan Park Comm. v. National Capital Planning Comm'n*, 968 F.2d 1283 (D.C. Cir. 1992); *Nguyen v. Liberty Mut. Ins. Co.*, App. D.C., 611 A.2d 541 (1992); *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992); *District of Columbia v. American Fed'n of Gov't Employees*, App. D.C., 619 A.2d 77 (1993), cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995); *Noble v. United States Parole Comm'n*, 82 F.3d 1108 (D.C. Cir. 1996); *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997); *National Black Police Ass'n v. District of Columbia*, 108 F.3d 346 (D.C. Cir. 1997).

§ 1-234. Investigations; subpoenas; oaths [Charter Provision].

(a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas, and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court. (1973 Ed., § 1-148; Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 413.)

Charter provisions. — This section of the D.C. Code is § 413 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to penalty for obstructing Council investigations and subpoenas, see § 1-224.

As to administration of oath by Mayor, Chairman of Council, and members of Council, see § 1-338.1.

Section references. — This section is referred to in § 1-1188.4.

§ 1-235. Seal.

The Council of the District of Columbia shall, by resolution, adopt an official seal, which shall be judicially noted. (May 22, 1981, D.C. Law 4-3, § 2, 28 DCR 1422.)

Legislative history of Law 4-3. — Law 4-3 was introduced in Council and assigned Bill No. 4-20, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 24, 1981 and

March 10, 1981, respectively. Signed by the Mayor on March 20, 1981, it was assigned Act No. 4-13 and transmitted to both Houses of Congress for its review.

§ 1-236. Council record reproduction fees authorized.

Pursuant to § 1-1504, the Secretary to the Council of the District of Columbia may establish and collect reasonable fees for the reproduction of transcripts or transcriptions of legislative meetings, committee meetings, legislative hearings, investigative hearings, and any other records that are part of the Council of the District of Columbia's official legislative files. (July 17, 1985, D.C. Law 6-6, § 2, 32 DCR 2954.)

Legislative history of Law 6-6. — Law 6-6, the "Council Record Reproduction Fee Authorization Act of 1985," was introduced in Council and assigned Bill No. 6-133, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on April 16, 1985 and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-19 and transmitted to both Houses of Congress for its review.

Subchapter IV. Mayor.

§ 1-241. Election; qualifications; vacancy; compensation [Charter Provision].

(a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor, established by subsection (a) of this section, shall be elected, on a partisan basis, for a term of 4 years beginning at noon on January 2nd of the year following his election.

(c)(1) No person shall hold the Office of Mayor unless he: (A) Is a qualified elector; (B) has resided and been domiciled in the District for 1 year immediately preceding the day on which the general or special election for Mayor is to be held; and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in § 5314 of Title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council. (1973 Ed., § 1-161; Dec. 24,

1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 421; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a).)

Charter provisions. — This section of the D.C. Code is § 421 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to political activity restrictions on federal and District employees, see 5 U.S.C. 7324.

As to vacancy in Office of Mayor, see §§ 1-221 and 1-228.

Section references. — This section is referred to in §§ 1-205, 1-232, 1-294, 1-602.2, 1-1321, 1-1601, 2-102, 31-1502, 31-2002, 33-501, 47-802, 47-1401, and 47-3201.

References in text. — “This Act,” referred to in subsection (d) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Cited in *Knable v. Wilson*, 570 F.2d 957 (D.C. Cir. 1977); *Barry v. District of Columbia Bd. of Elections & Ethics*, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978); *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978); *District of Columbia v. Catholic Univ. of Am.*, App. D.C., 397 A.2d 915 (1979); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *McClough v. United States*, App. D.C., 520 A.2d 285 (1987).

§ 1-242. Powers and duties [Charter Provision].

The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan No. 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor, execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the Office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding January 2, 1975, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3) of this section, continue to be subject to the provisions of acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to § 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order No. 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to

positions formerly occupied, ex officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to January 2, 1975, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3) of this section.

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after January 2, 1975, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in § 1-213(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act, except that nothing in this Act shall prohibit the District from separating an officer or employee subject to such system in the implementation of a financial plan and budget for the District government approved under subpart B of subchapter VII of Chapter 3 of Title 47, and except that nothing in this section shall prohibit the District from paying an employee overtime pay in accordance with § 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 207). The District government merit system shall take effect not earlier than 1 year nor later than 5 years after January 2, 1975.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the federal government under § 1-1131) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such

functions to subordinates under his jurisdiction. Nothing in the previous sentence may be construed to permit the Mayor to delegate any functions assigned to the Chief Financial Officer of the District of Columbia under subchapter I-A of Chapter 3 of Title 47, without regard to whether such functions are assigned to the Chief Financial Officer under such section during a control year (as defined in § 47-393(4)) or during any other year.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not to exceed level IV of the Executive Schedule established under § 5315 of Title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States government legislation or other action dealing with any subject, whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within 60 days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization. (1973 Ed., § 1-162; Dec. 24, 1973, 87 Stat. 790, Pub. L. 93-198, title IV, § 422; Aug. 17, 1991, 105 Stat. 540, Pub. L. 102-106, § 3; Oct. 29, 1993, 107 Stat. 1350, Pub. L. 103-127, title I, § 140; Apr. 17, 1995, 109 Stat. 116, 147, Pub. L. 104-8, §§ 202(h), 302(b).)

Charter provisions. — This section of the D.C. Code is § 422 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Cross references. — As to certain delegated functions and functions of certain agencies, see § 1-212.

As to goal of affirmative action in District government employment, see § 1-507.

As to assistance of United States Civil Service Commission in development of District merit system, see § 1-515.

As to use of official mail by Mayor, see Chapter 17 of this title.

As to duties of Mayor with respect to financial affairs of District, see § 47-310.

Section references. — This section is referred to in §§ 1-299.3, 1-515, 1-601.1, 1-620.2, 1-1181.5, 1-2604, 1-2606, 5-102, 32-623, and 35-124.

Emergency act amendments. — For temporary provision, on an emergency basis, to promote the orderly transfer of executive duties and responsibilities upon expiration of the term of office of the Mayor and the assumption of duties and responsibilities of the new Mayor, see §§ 2-6 of the Mayoral Transition Emergency Act of 1998 (D.C. Act 12-541, 46 DCR 303).

References in text. — “This Act,” referred to in this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

“§ 1-1131,” referred to in paragraph (6) of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258. Present provisions similar to repealed § 1-1131 are codified as § 1-1131.1 and 31 U.S.C. § 1537.

Compensation for City Administrator. — Section 119(a) of Pub. L. 104-194, 110 Stat. 2366, the District of Columbia Appropriations Act, 1997, provided that notwithstanding § 1-242(7), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. § 5315.

Report delineating actions taken to implement Multiyear Budget Spending Reduction and Support Act. — Section 811 of D.C. Law 10-253 provided that within 120 days of the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, the Mayor shall submit to the Council a report delineating the actions taken by the executive to effect the directives of the Council in the Multiyear Budget Spending Reduction and Support Act of 1995, including:

(1) Negotiations with representatives of collective bargaining units to reduce employee compensation;

(2) Actions to restructure existing long-term city debt;

(3) Actions to apportion the spending reductions anticipated by the directives of this act to the executive for unallocated reductions; and

(4) A list of any position that is backfilled including description, title, and salary of this position.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Section 811 of the Multiyear Budget Spending and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197) provided that within 120 days of the effective date of the act, the Mayor shall submit to the Council a report delineating the actions taken by the executive to effect the directives of the Council in the act.

Office of the Secretary established. — See Mayor's Orders 84-77, April 16, 1984; 84-112, July 11, 1984.

Office of Ombudsman established. — See Mayor's Order 86-140, August 22, 1986.

Amendment of Mayor's Order 83-17, January 3, 1983, Establishment of the Office of Operations. — See Mayor's Order 88-11, January 30, 1988.

Delegation of Authority — City Administrator. — See Mayor's Order 88-16, January 30, 1988.

Delegation of Authority — State Legalization Impact Assistance Grants. — See Mayor's Order 88-169, July 14, 1988.

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 95-45, March 23, 1995.

Delegation of Authority Under D.C. Act 11-404, the “General Obligation Bond Act of 1996.” — See Mayor's Order 96-146, October 7, 1996 (43 DCR 5671).

Possibility of infringement of Mayor's executive powers exists. — Legislation by the Council or an initiative by the electorate could possibly infringe on the executive functions vested in the Mayor. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

But Council may not interfere with Mayor's exercise of exclusive authority. — The Council may not take action which would interfere with the Mayor's exercise of his exclusive executive and administrative authority. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

And initiative cannot extend to purely executive or administrative matters. — The power of the electorate to propose laws through the initiative, being essentially coextensive with the power of the legislative branch of government to make legislative and policy decisions, cannot extend to matters purely executive or administrative in nature without violating the separation of powers established by Congress. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

Development of comprehensive personnel system mandated. — Under the District of Columbia Self-Government and Governmental Reorganization Act, among the powers and authority thereby delegated, the District government was given the mandate to develop its own comprehensive personnel system to replace the federal system which controlled. *American Fed'n of Gov't Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Employees transferred from federal to District employment. — The District may not selectively supersede those portions of the federal personnel act relating to attorney's fees until the benefits are replaced with equivalent alternatives in the Comprehensive Merit Personnel Act for pre-1980 employees, who previously enjoyed the federal entitlement. *District of Columbia v. Hunt*, App. D.C., 520 A.2d 300 (1987).

“At least equal to” language does not guarantee benefits equal to those under federal compensation system. — The “at least equal to” language in paragraph (3) of this section does not require the District to develop a compensation system for its employees guaranteeing benefits equal to those enjoyed under the previously applicable federal compensation system. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Paragraph (3) of this section requires only that District of Columbia personnel benefits must be at least equal to the benefits the incumbent employees had “immediately prior to the effective date” of the District’s permanent merit system — not to the benefits provided to federal employees thereafter. *Thomas v. Barry*, 729 F.2d 1469 (D.C. Cir. 1984).

But provides one-time floor for benefits. — The “at least equal to” language in paragraph (3) of this section provides a floor for benefits under the District of Columbia Comprehensive Merit Personnel Act, equal to those applicable to federal employees “immediately prior” to enactment of District personnel legislation, but does not mandate continuing equality of all benefits including pay. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Provision permitting Mayor to consider budgetary constraints when adjusting salary or pay schedules valid. — Section 1-612.5(e), permitting the Mayor to take into consideration, among other things, “budgetary constraints due to limited appropriations or revenues” when making salary or pay schedule adjustments, is not invalid on the basis that the resultant adjustments might not match the federal personnel system pay provisions because the “at least equal” language of paragraph (3) of this section provides a guideline as to a one-time floor for benefits rather than a guarantee of continuing equality of benefits between the federal and the District compensation systems. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Employees involuntarily transferred to District employment not entitled to federal pay increase. — Employees involuntarily transferred from federal to District employment pursuant to the District of Columbia Self-Government and Governmental Reorganization Act are not entitled to a 9.1% federal pay increase instead of the 5% increase received by District employees under the amended Comprehensive Merit Personnel Act. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Federal reduction-in-force provisions upheld. — Implementation of reduction-in-force provisions does not violate the Home Rule Act; the Financial Responsibility Act, which amended the Home Rule Act, expressly authorizes terminating an employee when implementing a financial plan approved by Congress. *Washington Teachers’ Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

Authority to seek review of Contract Appeals Board decisions. — Council deliberately chose to limit the Mayor’s and the Corporation Counsel’s authority in the procurement area and, thereby, conferred on the Department of Administrative Services the exclusive authority to seek judicial review of Contract Appeals Board decisions against the District. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Cited in *Matthews v. Washington*, 424 F. Supp. 97 (D.D.C. 1976); *Cannon v. United States*, 645 F.2d 1128 (D.C. Cir. 1981); *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986); *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988); *District of Columbia Dep’t of Cors. v. Teamsters Union Local 246*, App. D.C., 554 A.2d 319 (1989); *District of Columbia Metro. Police Dep’t v. Broadus*, App. D.C., 560 A.2d 501 (1989); *Zenian v. District of Columbia Office of Employee Appeals*, App. D.C., 598 A.2d 1161 (1991); *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992); *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 1-243. Submission of statement of impact of proposed acts on taxpayers.

The Mayor shall submit to the Council of the District of Columbia, simultaneously with any proposed revenue measure or proposed act, a detailed statement with supporting data concerning the direct and indirect impact of the measure or bill upon those taxpayers who will be directly or indirectly affected by the measure or act. (1973 Ed., § 1-162a; Apr. 19, 1977, D.C. Law 1-124, title IX, § 902, 23 DCR 8749.)

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned

Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was

adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Possibility of infringement of Mayor's

executive power. — Legislation by the Council or an initiative by the electorate could possibly infringe on the executive functions vested in the Mayor. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

§ 1-244. Municipal planning [Charter Provision].

(a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in §§ 9-106 and 9-128, or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the federal establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the federal establishment as determined in the manner provided by act of Congress. (1973 Ed., § 1-163; Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 423.)

Charter provisions. — This section of the D.C. Code is § 423 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Section references. — This section is referred to in §§ 1-245, 1-2295.1, 1-2295.12, 5-805, and 47-303.

Comprehensive plan goals and policies. — Act of March 3, 1979, D.C. Law 2-134,

established the goals and policies of the District of Columbia as the first District element of the comprehensive plan for the National Capital.

Section 4 of the District of Columbia Comprehensive Plan Act of 1984 (D.C. Law 5-76) repealed the District of Columbia Comprehensive Plan Goals and Policies Act of 1978 (D.C. Law 2-134).

District of Columbia Comprehensive Plan of 1984. — Section 2 of D.C. Law 8-129, as amended by § 201 of D.C. Law 8-132, amended Titles I through VIII, X and XI, and added Title XII to the District of Columbia

Comprehensive Plan of 1984, adopted by D.C. Law 5-76. D.C. Law 8-129 was reprinted in its entirety in 37 DCR 55. Amended Titles I through VII, X, XI, and new Title XII will be codified at Title 10 of the District of Columbia Municipal Regulations. D.C. Law 8-132 is found at 37 DCR 2213.

Review of District elements by National Capital Planning Commission. — Section 6(b) of D.C. Law 5-187, and § 4(b) of D.C. Law 8-129, provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in subsection (a) of § 1-2002 and this section.

Establishment of District of Columbia Advisory Council on Memorials. — See Mayor's Order 89-201, September 8, 1989.

Possibility of infringement of Mayor's executive power. — Legislation by the Council or an initiative by the electorate could possibly infringe on the executive functions vested in the Mayor. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Cited in *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

§ 1-245. District elements of comprehensive plan prepared; purposes.

(a) It is hereby declared that:

(1) The District of Columbia has prepared, through an exhaustive process of research, analysis, and review, including citizen involvement and consultation with affected federal, state and local governments, and planning agencies in the National Capital region, District elements of a 20-year Comprehensive Plan for the National Capital as required by § 1-2002(a) and by § 1-244(a).

(2) Ten District elements of the Comprehensive Plan for the National Capital are contained in this act: General Provisions; Economic Development; Housing; Environmental Protection; Transportation; Public Facilities; Urban Design; Preservation and Historic Features; Downtown; and Human Services.

(3) The District elements of the Comprehensive Plan for the National Capital contained in this act do not extend to any federal or international projects and developments, or to the United States Capitol buildings and grounds, or to any buildings and grounds under the care of the Architect of the Capitol.

(b) The purposes of the District elements of the Comprehensive Plan for the National Capital are to:

(1) Define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;

(2) Guide executive and legislative decisions on matters affecting the District and its citizens;

(3) Promote economic growth and jobs for District residents;

(4) Guide private and public development in order to achieve District and community goals;

(5) Maintain and enhance the natural and architectural assets of the District; and

(6) Assist in the conservation, stabilization, and improvement of each neighborhood and community in the District. (Apr. 10, 1984, D.C. Law 5-76, § 2, 31 DCR 1049.)

Cross references. — As to provisions concerning National Capital Planning Commission, see § 1-2001.

Legislative history of Law 5-76. — Law 5-76, the “District of Columbia Comprehensive Plan Act of 1984,” was introduced in Council and assigned Bill No. 5-282, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on January 17, 1984 and January 31, 1984, respectively. Signed by the Mayor on February 23, 1984, it was assigned Act No. 5-112 and transmitted to both Houses of Congress for its review.

Repeal of § 2 of D.C. Law 5-187. — Section 3(a) of D.C. Law 12-275 provides that § 2 of D.C. Law 5-187 is repealed, effective April 27, 1999. Section 2 of D.C. Law 5-187 had added a new title XI to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76.

References in text. — “This act,” referred to in subsection (a)(2) and (3) of this section, is D.C. Law 5-76.

District of Columbia Comprehensive Plan of 1984. — Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled “The District of Columbia Comprehensive Plan of 1984,” and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that “the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital.”

Section 2 of D.C. Law 8-129, as amended by § 201 of D.C. Law 8-132, amended Titles I through VIII, X and XI, and added Title XII to the District of Columbia Comprehensive Plan

of 1984, adopted by D.C. Law 5-76. D.C. Law 8-129 was reprinted in its entirety in 37 DCR 55. Amended Titles I through VII, X, XI, and new Title XII will be codified at Title 10 of the District of Columbia Municipal Regulations. D.C. Law 8-132 is found at 38 DCR 2213.

Review of District elements by National Capital Planning Commission. — Section 8(b) of D.C. Law 5-76, and § 4(b) of D.C. Law 8-129, provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in subsection (a) of §§ 1-2002 and 1-244.

Progress report on Comprehensive Plan findings. — Pursuant to Resolution 8-243, the “Progress Report on the Comprehensive Plan Findings Resolution of 1990”, effective August 10, 1990, the Council submitted to the Mayor the findings of the Council on the Mayor’s 3rd biennial progress report on implementing the District of Columbia elements of the Comprehensive Plan.

Comments on Zoning Commission’s proposed Downtown Development District action. — Pursuant to Resolution 8-318, the “Zoning Commission Downtown Development District Comments Resolution of 1990”, effective December 21, 1990, the Council expressed the opinion of the Council to the District of Columbia Zoning Commission concerning the Commission’s proposed action on the Downtown Development District.

Cited in Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 530 A.2d 1163 (1987), petition dismissed sub nom., United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994) ; Rafferty v. District of Columbia Zoning Comm’n, App. D.C., 583 A.2d 169 (1990).

§ 1-246. Mayor to submit proposed Land Use Element and map; submission of amendments to District elements of comprehensive plan; specifications; approval.

(a) The Mayor of the District of Columbia shall transmit to the Council of the District of Columbia, on or before the date of the 1st regularly scheduled legislative session in September 1984, a proposed District Land Use Element for inclusion in the Comprehensive Plan for the National Capital and a generalized land use map or a series of maps, which includes a generalized land use map, representing the land use policies set forth in the proposed Land Use Element. At the time of the submission to the Council of the District of Columbia of the proposed Land Use Element and the generalized land use map representing the land use policies set forth in that element, proposed amendments to the rest of this act shall be submitted to the Council of the District of

Columbia to conform the language in this act to ensure consistency with the Land Use Element and with the generalized land use map.

(b) The Mayor shall transmit 4 generalized land use maps to the Council within 90 days of May 23, 1990. The maps transmitted under this subsection shall conform to the requirements of sections 1136(a) through (h) of title 11 of section 3 of this act (“Land Use Element of the Comprehensive Plan”), be printed at a scale of 1,200 feet to 1 inch, use standardized colors for planning maps, and include a street grid and other minor changes in format or design intended to improve the readability or understanding of the adopted policies. The Council shall hold a public hearing to determine if the maps transmitted under this subsection conform to the maps adopted under sections 1136(a) through (h) of the Land Use Element of the Comprehensive Plan. If the Council determines that a map transmitted under this subsection conforms to a map adopted under sections 1136(a) through (h) of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution.

(c) The Mayor shall transmit 2 generalized land use maps to the Council within 180 days of April 27, 1999. The maps transmitted under this section shall conform to the requirements of section 1139 of Chapter 11 (“the Land Use Element”) of the Comprehensive Plan, be printed at a scale of 1,200 feet to 1 inch, use standardized colors for planning maps, indicate generalized land use policies, and include a street grid and other changes in format or design to improve the readability and understanding of the adopted policies. The Council shall hold a public hearing to determine if the maps transmitted under this section conform to the maps adopted under section 1139 of the Land Use Element of the Comprehensive Plan. If the Council determines that a map transmitted under this section conforms to a map adopted under section 1139 of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution. If the Council determines that a map transmitted under this section requires corrections to conform with a map adopted under section 1139 of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution, with conditions identifying the required corrections, and the Mayor shall publish a new map with the required corrections. (Apr. 10, 1984, D.C. Law 5-76, § 7, 31 DCR 1049; May 23, 1990, D.C. Law 8-129, § 3(a)(1), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(a)(1), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, § 4(a), 42 DCR 30; Apr. 9, 1997, D.C. Law 11-255, § 3, 44 DCR 1271; Apr. 27, 1999, D.C. Law 12-275, § 2(b), 46 DCR 1441.)

Cross references. — As to National Capital Planning Commission, see § 1-2002.

Section references. — This section is referred to in §§ 9-401 and 9-407.

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (c).

D.C. Law 12-275 rewrote (c).

Legislative history of Law 5-76. — See note to § 1-245.

Legislative history of Law 8-129. — See note to § 1-248.

Legislative history of Law 10-193. — Law 10-193, the “Comprehensive Plan Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-212, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on August 8, 1994, it was assigned Act No. 10-323 and transmitted to both Houses of Congress for its review. D.C. Law 10-193 became effective on October 6, 1994.

Legislative history of Law 10-235. — Law

10-235, the "District of Columbia Comprehensive Plan Act of 1984 Land Use Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-689, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-378 and transmitted to both Houses of Congress for its review. D.C. Law 10-235 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-275. — Law 12-275, the "Comprehensive Plan Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Effective date of District elements of the Comprehensive Plan for the National Capital. — Section 4(b) of D.C. Law 10-193 provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in § 1-2002(a) and § 1-244.

Repeal of § 2 of D.C. Law 5-187. — Section 3(a) of D.C. Law 12-275 provides that § 2 of D.C. Law 5-187 is repealed, effective April 27, 1999. Section 2 of D.C. Law 5-187 had added a new title XI to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76.

References in text. — "This act," referred to in (a) and (b), refers to D.C. Law 5-76.

The "Land Use Element of the Comprehensive Plan", referred to throughout (b) and (c), is codified at 10 DCMR Ch. 11.

The generalized land use maps of the Land

Use Element of the Comprehensive Plan are codified at 10 DCMR 1135.

District of Columbia Comprehensive Plan of 1984. — Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled "The District of Columbia Comprehensive Plan of 1984," and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital".

Section 2 of D.C. Law 10-193 amended D.C. Law 5-76. The text of D.C. Law 10-193 is found at 41 DCR 5536.

Council's conditional approval of 4 revised land use maps. — Pursuant to Resolution 6-263, the "Comprehensive Plan Land Use Maps Approval Resolution of 1985," effective July 9, 1985, the Council approved 4 revised land use maps transmitted by the Mayor pursuant to § 1136(i) of the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984 (D.C. Law 5-187) on the condition that certain specified changes be made.

Comprehensive Plan Land Use Maps Approval Resolution of 1992. — Pursuant to Resolution 9-275, effective July 31, 1992, the Council approved the 4 proposed land use maps, dated November 1990, transmitted by the Mayor pursuant to the District of Columbia Comprehensive Plan Amendments Act of 1989.

Comprehensive Plan Land Use Maps Approval Resolution of 1996. — Pursuant to Resolution 11-313, effective May 7, 1996, Council approved the two new and updated District of Columbia generalized land use maps transmitted by the Mayor pursuant to the District of Columbia Comprehensive Plan Amendments Act of 1994.

Cited in Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 530 A.2d 1163 (1987), petition dismissed sub nom., United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994); Rafferty v. District of Columbia Zoning Comm'n, App. D.C., 583 A.2d 169 (1990).

§ 1-247. Mayor to propose ward plans; updated plans; public hearing; transmission to Council for adoption.

- (a) Repealed.
- (b) Repealed.

(c)(1) The Mayor may prepare proposed small area action plans for selected geographical areas that require more specific land use analysis to incorporate the broadest range of planning techniques and solutions practical to achieve the District's goals and objectives. The proposed small area action plans may include specific zoning recommendations, capital improvements requirements, financing strategies, special tax, design, or other regulatory recommendations, and implementation techniques necessary for the realization of objectives and policies of the Comprehensive Plan.

(2) The Mayor shall make copies of each proposed small area action plan available to each affected Advisory Neighborhood Commission and make ample copies of each proposed small area plan available to the Council and the public. Each proposed small area action plan shall include small area maps that depict land use policies at the small area level that are not inconsistent with the adopted generalized District-wide land use maps or approved ward plans.

(3) The Mayor shall hold a public hearing on each proposed small area action plan in the appropriate area, not less than 30 days after the publication of the proposed small area action plan and not more than 90 days after the publication of the proposed small area action plan.

(4) Not more than 60 days after the completion of the public hearing required by this subsection, the Mayor shall transmit the revised small area action plan to the Council, with a proposed resolution, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The transmission shall include copies of the Mayor's public hearing records, and an executive summary that identifies the differences, and the rationale for the differences, between the revised small area action plan and the proposed small area action plan that had been the subject of a public hearing. If the Council does not approve or disapprove the revised small area action plan, in whole or in part, by resolution within this 45-day review period, the revised small area plan shall be deemed approved. Once approved, the small area action plan shall provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the Comprehensive Plan.

(5) Small area action plans shall be prepared for selected geographical areas, including, but not limited to, the following areas:

(A) Each of the special treatment areas, housing opportunity areas, and development opportunity areas that are designated on the enacted District-wide generalized land use maps to implement the policies established for these areas in the Land Use Element of the Comprehensive Plan;

(B) The Mount Pleasant area, after studying the following proposed policies for this area:

(i) Support creative and multicultural expression through displays, performances, and festivals;

(ii) Maintain and enhance the character of the neighborhood by encouraging creative cultural design (including special-merit design) while protecting historical landmarks;

(iii) Promote additional low-income and moderate-income housing;

(iv) Encourage small-business incubators and plazas for licensed market vendors in order to increase business opportunities for residents; and

(v) Support low-impact mixed-use of residential space for multicultural arts, crafts, and other professional and consulting services;

(C) The Southwest Urban Renewal Area and other urban renewal areas to ensure that appropriate zoning plans for these areas continue to be developed in consultation with affected citizens, which shall be implemented in phases immediately upon the termination of the various sections of the urban renewal plans; and

(D) The Capitol Hill business district, the Eastern Market metrorail station area, and the Potomac Avenue metrorail station area, to implement policies for these areas set forth in the Ward 6 Plan. (Mar. 16, 1985, D.C. Law 5-187, § 4, 32 DCR 873; May 23, 1990, D.C. Law 8-129, § 3(b)(1), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(1), 41 DCR 5536; Apr. 18, 1996, D.C. Law 11-110, § 2(b), 43 DCR 530; Apr. 27, 1999, D.C. Law 12-275, § 3(a), (b), 46 DCR 1441.)

Cross references. — As to National Capital Planning Commission, see § 1-2002.

Effect of amendments. — D.C. Law 12-275 repealed (a) and (b); and in (c)(1), substituted “may” for “shall” throughout and substituted “objectives and policies of the Comprehensive Plan” for “development projects” at the end of the second sentence.

Legislative history of Law 5-187. — Law 5-187, the “District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-507, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-252 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-129. — See note to § 1-248.

Legislative history of Law 10-193. — See note to § 1-246.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed

by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-275. — Law 12-275, the “Comprehensive Plan Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Effective date of District elements of Comprehensive Plan for the National Capital. — See note to § 1-246.

References in text. — “This act,” referred to in (b)(1), is D.C. Law 8-129.

Extension of statutory deadline for preparation of draft ward plans. — Pursuant to Resolution 6-580, the “Draft Ward Plans Emergency Declaration Resolution of 1986,” effective March 11, 1986, the Council determined that emergency circumstances made it necessary that the Draft Ward Plans Emergency Amendment Act of 1986 be adopted after a single reading to extend by 3 months the statutory deadline by which the Mayor is required to prepare draft ward plans.

§ 1-248. Preserving and ensuring community input.

(a) Continuous community input into every phase of development of titles I through XII of section 3 (the “Comprehensive Plan”), from conception to adoption to implementation, is essential to assure that the Comprehensive Plan in all its elements is the valid expression of District residents, property

owners, commercial interests, and other groups and individuals in the District. A variety of means to secure community input should be utilized, including advisory and technical committees, community workshops, review of draft texts, public forums and hearings, and other means of discussion and communication. The District government, through its executive and legislative branches, will strive to ensure that the Comprehensive Plan, in all its elements, is both responsive and responsible.

(b) Community input into the implementation of the District elements of the Comprehensive Plan will be assured by the requirement of a periodic review. Not less frequently than once every 4 years, beginning March 31, 2000, the Mayor shall submit to the Council a report, accompanied by a proposed resolution, on the progress made by the government of the District of Columbia in implementing the District elements of the Comprehensive Plan. The Council shall schedule a public hearing on the progress report and, following each review period, submit to the Mayor the findings of the Council and a copy of the public testimony on the progress report.

(c) Each progress report shall indicate the progress made in implementing the Land Use Element of the Comprehensive Plan by land use policy during the reporting period and the key projected implementation activities by land use policy for the next 5 years.

(d) The Mayor shall submit periodically to the Council for its consideration proposed amendments to the Comprehensive Plan. Such amendments shall be submitted not less frequently than once every 4 years, beginning March 31, 2002, and shall be accompanied by an environmental assessment of the proposed amendments. Proposed amendments may also be submitted by the Mayor to the Council at any other time that the Mayor determines to be necessary.

(e) The process for executive branch consideration of proposed amendments to the Comprehensive Plan initiated by District agencies or the public shall include:

- (1) Standards for appropriateness;
 - (2) A format and deadline for submission of amendments;
 - (3) Public meetings to be held by the executive;
 - (4) A mechanism for public review of all proposed amendment submissions;
 - (5) A mechanism for public review of the Mayor's proposed amendments;
- and

(6) Submission by the Mayor to the Council of proposed amendments to the Comprehensive Plan. (Apr. 10, 1984, D.C. Law 5-76, § 8[9], as added May 23, 1990, D.C. Law 8-129, § 3(a)(2), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(a)(2), 41 DCR 5536; Apr. 27, 1999, D.C. Law 12-275, § 2(c), 46 DCR 1441.)

Effect of amendments. — D.C. Law 12-275, in (b), substituted "March 31, 2000" for "January 31, 1998"; rewrote (c); and, in (d), substituted "March 31, 2002" for "January 7, 1997."

Legislative history of Law 8-129. — Law 8-129 was introduced in Council and assigned

Bill No. 8-2, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 10, 1989, and October 24, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-193. — See note to § 1-246.

Legislative history of Law 12-275. — See note to § 1-246.

Effective date of District elements of the Comprehensive Plan for the National Capital. — See note to § 1-246.

References in text. — “Titles I through XII of section 3 (the ‘Comprehensive Plan’)” referred to in the first sentence of (a), refers to § 3 of D.C. Law 5-76.

Progress Report on the Comprehensive Plan Findings Resolution of 1992. — Pursuant to Resolution 9-267, effective July 10, 1992, the Council resolved to submit to the Mayor the findings of the Council on the Mayor’s 4th biennial progress report on implementing the District of Columbia Elements of the Comprehensive Plan.

§ 1-248.1. Publication of the Comprehensive Plan.

(a) The Mayor shall, within 180 days of April 27, 1999, publish the Comprehensive Plan, as amended, in its entirety.

(b) The Comprehensive Plan shall be consolidated by the District of Columbia Office of Documents into a single new title of the District of Columbia Municipal Regulations to be designated by the District of Columbia Office of Documents. (Apr. 10, 1984, D.C. Law 5-76, § 9a, as added Oct. 6, 1994, D.C. Law 10-193, § 3(a)(3), 41 DCR 5536; Apr. 27, 1999, D.C. Law 12-275, § 2(d), 46 DCR 1441.)

Effect of amendments. — D.C. Law 12-275, in (a), substituted “April 27, 1999” for “August 8, 1994”; and in (b), deleted the former last sentence pertaining to the availability for sale of titles I through XI of the Comprehensive Plan and each of the 8 ward plans, separately from title XII.

Legislative history of Law 10-193. — See note to § 1-246.

Legislative history of Law 12-275. — See note to § 1-246.

Effective date of District elements of the Comprehensive plan for the National Capital. — See note to § 1-246.

§ 1-249. Review of building, construction, or public space permits.

(a) The Mayor shall, in the course of the interagency review of a development project that is subject to the Large Tract Review Procedures of the Office of Planning (10 DCMR § 2300 et seq.), consider whether the issuance of a building or construction permit is inconsistent with the Land Use Element of the Comprehensive Plan. If the Mayor finds that the issuance of a permit is inconsistent with the Land Use Element of the Comprehensive Plan, but consistent with zoning, the Mayor shall defer issuance of the permit, and within 60 days, propose amendments to the zoning regulations or maps to eliminate the inconsistency of the zoning regulations with the Land Use Element of the Comprehensive Plan. Nothing in this subsection shall be construed to permit the issuance of a building or construction permit that is inconsistent with zoning. The government issuance of public space permits shall also not be inconsistent with the Comprehensive Plan.

(b) If the Mayor finds that the issuance of any building or construction permit, which is not subject to subsection (a) of this section solely because of insufficient commercial square footage, would be inconsistent with the Land Use Element of the Plan, but consistent with zoning, the Mayor may defer the decision to issue the requested permit and, if he defers he shall propose, within 60 days, amendments to the zoning regulations or maps to eliminate any

inconsistency of the zoning regulations with the Land Use Element of the Plan. This subsection shall apply only to the construction of new commercial buildings that are not low density commercial buildings.

(c) When a major new building proposed for a college or university campus, and included in its campus plan, is instead moved off campus, the college or university must submit the plans for the review and approval of the Board of Zoning Adjustment as a specific amendment to its campus plan, limited to review of the change affecting that specific site, before the college or university may substitute another major new building for that campus plan site. For purposes of this subsection, a major new building is defined as one specifically identified in the campus plan. Further, in order for the community to know as quickly as possible the substitute plans for the site, the review and approval of the new plans are to be done on an expedited basis. If the campus plan site is to remain vacant, or if the existing uses on that site are to remain, then the college or university is required to provide each affected Advisory Neighborhood Commission with written notice of that decision within 30 days of the college's or university's decision for movement. In such event, no further review by the Board of Zoning and Adjustment is required. (Mar. 16, 1985, D.C. Law 5-187, § 6, as added May 23, 1990, D.C. Law 8-129, § 3(b)(3), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(2), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, § 2, 42 DCR 30.)

Section references. — This section is referred to in § 47-813.

Legislative history of Law 8-129. — See note to § 1-248.

Legislative history of Law 10-193. — See note to § 1-246.

Legislative history of Law 10-235. — See note to § 1-246.

Effective date of District elements of the Comprehensive Plan for the National Capital. — See note to § 1-246.

§ 1-250. Zoning conformity.

(a)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the government shall be subject to zoning.

(2) Any governmental land uses that were either existent or substantially planned, documented, and invested in prior to May 23, 1990, shall not be subject to zoning.

(3) The use of government-owned property on Lot 276 in Square 1282, which is located at 3050 R Street, N.W., as a residential treatment and special education facility for not more than 24 emotionally disturbed children, ages 6 to 12 years, and as a treatment and special education facility for not more than 15 emotionally disturbed children, ages 6-12, who do not reside at the facility, shall not be subject to zoning.

(4) The government's use of property on the former site of the United States Naval Air Station communications facility located in the northeast corner of the east campus of Saint Elizabeths Hospital as a facility to send and receive 911 or other governmental emergency communications shall not be subject to zoning. Any governmental use of this property for other purposes or any non-governmental use of this property shall be subject to zoning or review and approval by the Council.

(b) The Mayor shall within 16 months of April 27, 1999, propose amendments to the zoning regulations or maps to eliminate any inconsistency of the zoning regulations with the Land Use Element of the Comprehensive Plan. (Mar. 16, 1985, D.C. Law 5-187, § 7, as added May 23, 1990, D.C. Law 8-129, § 3(b)(3), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(3), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, §§ 2(1), 4(b), 42 DCR 30; Apr. 27, 1999, D.C. Law 12-275, § 3(c), 46 DCR 1441.)

Section references. — This section is referred to in § 47-813.

Effect of amendments. — D.C. Law 12-275 in (a), substituted “(2), (3), and (4)” for “(2) and (3)” in (1), and added (4); and in (b), substituted “April 27, 1999” for “October 6, 1994”.

Temporary amendment of section. — Section 2 of D.C. Law 12-218 in (a), substituted “(2), (3), and (4)” for “(2) and (3)” in (1), and added (4); and, in (b) substituted “April 27, 1999” for “October 6, 1994.”

Section 4(b) of D.C. Law 12-218 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Comprehensive Plan Land Use Antenna Exemption Emergency Amendment Act of 1998 (D.C. Act 12-514, December 9, 1998, 46 DCR 1).

Legislative history of Law 8-129. — See note to § 1-248.

Legislative history of Law 10-190. — Law 10-190, the “District Government Land Use Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-688. The Bill was adopted on first and second readings on July 5, 1994, and July 19, 1994, respectively. Signed by the Mayor on August 4, 1994, it was assigned Act No. 10-316 and transmitted

to both Houses of Congress for its review. D.C. Law 10-190 became effective on October 1, 1994.

Legislative history of Law 10-193. — See note to § 1-246.

Legislative history of Law 10-235. — See note to § 1-246.

Legislative history of Law 12-218. — Law 12-218, the “Comprehensive Plan Land Use Antenna Exemption Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-779. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-533 and transmitted to both Houses of Congress for its review. D.C. Law 12-218 became effective on April 13, 1999.

Legislative history of Law 12-275. — See note to § 1-246.

Effective date of District elements of the Comprehensive Plan for the National Capital. — See note to § 1-246.

Applicability. — Although the District government was previously exempt from zoning laws applicable to private parties, it is exempt no longer. *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

Subchapter V. Advisory Neighborhood Commissions.

§ 1-251. Advisory Neighborhood Commissions.

(a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a Neighborhood Commission area, shall establish for that neighborhood an elected Advisory Neighborhood Commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each Advisory Neighborhood Commission shall be nonpartisan, and shall be administered by the Board of Elections and Ethics. Advisory Neighborhood Commission members shall be elected from single-member districts within each neighborhood commission area by the registered qualified electors of such district.

(c) Each Advisory Neighborhood Commission:

(1) May advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) May employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) Shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each Advisory Neighborhood Commission of requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the Advisory Neighborhood Commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall allot funds to the Advisory Neighborhood Commissions out of the general revenues of the District. The funding apportioned to each Advisory Neighborhood Commission shall bear the same ratio to the full sum allotted as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing Advisory Neighborhood Commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each Advisory Neighborhood Commission and shall establish guidelines with respect to the employment of persons by each Advisory Neighborhood Commission, which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all Advisory Neighborhood Commissions and shall provide that decisions to employ and discharge employees shall be made by the Advisory Neighborhood Commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority, in accordance with the provisions of this Act, to legislate with respect to the Advisory Neighborhood Commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of § 703(a) of this Act. (1973 Ed., § 1-171; Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 738; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 30, 1975, D.C. Law 1-27, § 2, 22 DCR 2470; Sept. 27, 1983, D.C. Law 5-26, § 2, 30 DCR 3654; Sept. 26, 1984, D.C. Law 5-116, § 4, 31 DCR 4018; Sept. 26, 1995, D.C. Law 11-52, § 814, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Cross references. — As to lobby exemptions for Commission members, see § 1-1453.

Section references. — This section is referred to in §§ 1-252 and 1-264.

Effect of amendments. — D.C. Law 12-264, in (e), substituted “allotted” for “alloted.”

Legislative history of Law 1-27. — Law 1-27 was introduced in Council and assigned

Bill No. 1-90, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-39 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-26. — Law 5-26 was introduced in Council and assigned Bill No. 5-107, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 7, 1983 and June 21, 1983, respectively. Signed by the Mayor on July 6, 1983, it was assigned Act No. 5-47 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-116. — Law 5-116 was introduced in Council and assigned Bill No. 5-61, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-168 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998 respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in text. — "This Act," referred to in (h), is the District of Columbia Self-Government and Governmental Reorganiza-

tion Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

References in other laws to Advisory Neighborhood Councils. — Section 4 of the Act of October 30, 1975, D.C. Law 1-27, provided: "Any reference in any law of or relating solely to the District of Columbia, or in any rule, regulation, paper, report, or other document of the District of Columbia government (including any agency thereof) to the Advisory Neighborhood Councils shall be deemed to be, after the effective date of this act, a reference to the Advisory Neighborhood Commissions."

Statutory scheme is designed to assure effective presentation of neighborhood views through the instrumentality of the Advisory Neighborhood Commission. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

Every decision requiring prior hearing requires written notice. — Every decision that requires a prior hearing is of sufficient significance within this section's meaning to require written notice. *Shiflett v. District of Columbia Bd. of Appeals & Review*, App. D.C., 431 A.2d 9 (1981).

Issuance of building permit is matter of significance to commission. — Issuance of a building permit in an Advisory Neighborhood Commission area is a matter of significance to the Commission for the purposes of this section. *Shiflett v. District of Columbia Bd. of Appeals & Review*, App. D.C., 431 A.2d 9 (1981).

"Great weight" given to Commission's recommendations. — This section requires that an independent agency of the District give "great weight" to recommendations of the Advisory Neighborhood Commission on a public policy proposal. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (1979).

Failure to give "great weight" to Commission's recommendations upheld. — Because subsection (d) of this section and § 1-261(c) do not include utility ratemaking among the matters about which Advisory Neighborhood Commissions (ANCs) are entitled to special notice, it follows that the Public Service Commission did not err in failing to give "great weight" to the advice it actually received from ANCs and from individual ANC Commissioners. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 630 A.2d 692 (1993).

Requirement that Board of Zoning Adjustment give great weight to recommendation of Commission is satisfied by specific mention of the Commission's concern in the Board's decision despite failure of the Board to mention the Commission as the source of the concern. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 397 A.2d 936 (1979).

Cited in *American Univ. Park Citizens Ass'n v. Burka*, App. D.C., 400 A.2d 737 (1979); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1973 (Super. Ct. 1987); *White v. District of Columbia Bd. of Elections &*

Ethics, App. D.C., 537 A.2d 1133 (1988); *Neighbors United For A Safer Community v. Board of Zoning Adjustment*, App. D.C., 647 A.2d 793 (1994).

§ 1-252. Purpose; definitions.

(a)(1) Section 1-251 provides that the Council shall, by act, divide the District of Columbia into neighborhood commission areas and establish, for each such area, an Advisory Neighborhood Commission. Such § 1-251 was to be effective only if a majority of the qualified electors voting in the charter referendum voted for the establishment of the Advisory Neighborhood Commissions.

(2) In the charter referendum a majority of the qualified electors did vote to establish such Commissions, and it is the purpose of this act to implement the provisions of § 1-251.

(b) Repealed. (1973 Ed., § 1-171a; Oct. 10, 1975, D.C. Law 1-21, § 2, 22 DCR 2065; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(a), 24 DCR 3336; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; Mar. 6, 1991, D.C. Law 8-203, § 3(a), 37 DCR 8420.)

Section references. — This section is referred to in § 2-1104.

Legislative history of Law 1-21. — Law 1-21 was introduced in Council and assigned Bill No. 1-87, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 10, 1975 and June 24, 1975, respectively. Signed by the Mayor on July 22, 1975, it was assigned Act No. 1-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 2-16. — Law 2-16 was introduced in Council and assigned Bill No. 2-77, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on May 17, 1977 and May 31, 1977,

respectively. Enacted without signature by the Mayor on June 22, 1977, it was assigned Act No. 2-49 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — Law 5-111 was introduced in Council and assigned Bill No. 5-333, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — See note to § 1-264.1.

References in text. — "This act," referred to in this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

§ 1-253. Advisory Neighborhood Commission areas.

There are hereby established in the District of Columbia Advisory Neighborhood Commission areas, the boundaries of which shall be as depicted on the maps of the District of Columbia annexed to and made a part of this act. (1973 Ed., § 1-171a-1; Oct. 10, 1975, D.C. Law 1-21, § 3, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Section references. — This section is referred to in § 1-254.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 5-111. — See note to § 1-252.

References in text. — “Maps of the District of Columbia annexed to and made a part of this act,” referred to in this section, are set forth in 22 DCR 2074 to 2081.

“This act,” referred to in this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

District boundaries established. — Pursuant to §§ 1-254 and 1-1308, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

§ 1-254. Single-member districts.

(a) The Council shall, by act, establish single-member districts for each of the neighborhood commission areas in § 1-253. Such districts shall be established in a timely manner following the receipt of alternate plans from the ward task forces on Advisory Neighborhood Commissions, established by § 1-1331. Each single-member district shall have a population of approximately 2,000 people, and shall be as nearly equal as possible. The boundaries of the single-member districts shall conform to the greatest extent possible with the boundaries of the census blocks which are established by the United States Bureau of the Census. Each advisory neighborhood commission area shall be located to the greatest extent possible within the boundaries of 1 election ward. An advisory neighborhood commission area may be located within 2 election wards if the location results from the limitations of census geography or if the location promotes a rational public policy, including, but not limited to, respect for the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous areas. Upon adoption of the act establishing such districts, the Council shall cause a description of the boundaries of each such district to be published in the District of Columbia Register.

(b) The Council shall, by act after public hearing by the Council’s Committee of the Whole, make such adjustments in the boundaries of the Advisory Neighborhood Commission single-member districts and the Advisory Neighborhood Commission areas as are necessary as a result of population shifts and changes. Such adjustments shall be made in a timely manner following the receipt of alternative plans from the ward task forces on Advisory Neighborhood Commissions, established by § 1-1331. Any adjustments made less than 180 days prior to a regularly scheduled election shall not be effective for that election. (1973 Ed., § 1-171b; Oct. 10, 1975, D.C. Law 1-21, § 4, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; June 23, 1981, D.C. Law 4-14, § 2(a), 28 DCR 2132; Mar. 16, 1982, D.C. Law 4-87, § 5(a), 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 7, 30 DCR 119; June 22, 1983, D.C. Law 5-13, § 3, 30 DCR 2433; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; Mar. 8, 1991, D.C. Law 8-240, § 3, 38 DCR 337.)

Section references. — This section is referred to in § 1-1332.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 4-14. — Law 4-14 was introduced in Council and assigned

Bill No. 4-97, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1981 and April 28, 1981, respectively. Signed by the Mayor on May 1, 1981, it was assigned Act No. 4-28 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-87. — Law

4-87 was introduced in Council and assigned Bill No. 4-181, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Approved without the signature of the Mayor on January 19, 1981, it was assigned Act No. 4-141 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-199. — Law 4-199 was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 16, 1982 and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-283 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-13. — Law 5-13 was introduced in Council and assigned Bill No. 5-158, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-27 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — See note to § 1-252.

Legislative history of Law 8-240. — Law 8-240 was introduced in Council and assigned Bill No. 8-560, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-323 and transmitted to both Houses of Congress for its review.

District boundaries established. — Pursuant to §§ 1-254 and 1-1308, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

D.C. Law 6-7, effective July 17, 1985, amended the narrative descriptions of the boundaries of Advisory Neighborhood Commissions 5A, 5B, 8A and 8C, and amended the map description of the boundaries of Advisory Neighborhood Commission 8A.

Pursuant to subsection (a) of this section, § 2 of D.C. Law 9-112 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

D.C. Law 9-174, effective October 3, 1992, amended D.C. Law 9-112 to change the boundaries of single-member districts 1C03, 1C04, and 1C05.

§ 1-255. Advisory Neighborhood Commissions — Petition required; established by resolution.

(a) As soon as possible after October 10, 1975, but in no case later than 5 days after such date, the District of Columbia Board of Elections and Ethics (hereinafter in this act referred to as the "Board") shall:

(1) Make available to any resident of an Advisory Neighborhood Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) Publish in the District of Columbia Register and in at least 2 newspapers of general circulation in the District of Columbia, the number of registered qualified electors in each Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish by resolution a nonpartisan elected Advisory Neighborhood Commission for such area, with its members to be elected from the single-member districts established for such area. Nothing in this section shall be construed to permit an individual to sign more than 1 petition for the establishment of an Advisory Neighborhood Commission. (1973 Ed., § 1-171c; Oct. 10, 1975, D.C. Law 1-21, § 5, 22 DCR 2067; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 5-111. — See note to § 1-252.

References in text. — “This act,” referred to in subsection (a) of this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

§ 1-256. Same — Qualifications of members; nomination by petition.

(a)(1) No person shall be a member of an Advisory Neighborhood Commission unless he:

(A) Is a registered qualified elector actually residing in the single-member district from which he was elected;

(B) Has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member; and

(C) Holds no other elected public office.

(2) For the purpose of this subsection, the term “elected public office” means the Office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the District of Columbia Board of Education, and the Delegate to the House of Representatives.

(b)(1) Candidates for member of an Advisory Neighborhood Commission shall be nominated by a petition:

(A) Prepared and presented to the Board in accordance with regulations of the Board no later than the 60th calendar day before the date of the election in which he intends to be a candidate; and

(B) Signed by not less than 25 registered qualified electors who are residents of the single-member district from which he seeks election.

(2) Such petitions shall be made available by the Board no later than the 90th calendar day before an election for members of an Advisory Neighborhood Commission. (1973 Ed., § 1-171d; Oct. 10, 1975, D.C. Law 1-21, § 6, 22 DCR 2068; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (b), 31 DCR 3952; Feb. 5, 1994, D.C. Law 10-68, § 3(a), 40 DCR 6311.)

Section references. — This section is referred to in §§ 1-257 and 1-267.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 5-111. — See note to § 1-252.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107

and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Eligibility of candidate. — Where petitioner met all legal requirements for access to the ballot, and where her candidacy was never officially challenged during the challenge period, she met all requirements necessary to ensure her place on the ballot and was therefore a candidate within the meaning of § 1-258. *Bates v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 625 A.2d 891 (1993).

Cited in *Shifflett v. District of Columbia Bd. of Appeals & Review*, App. D.C., 431 A.2d 9 (1981).

§ 1-257. Same — Election of members; term of office; vacancies; change in residency; resignation; removal.

(a) Following the initial elections of members of Advisory Neighborhood Commissions in November 1976, subsequent elections of such members occurred in November of odd-numbered calendar years through 1981. Beginning in 1984, general elections of members of Advisory Neighborhood Commissions shall take place on the 1st Tuesday after the 1st Monday in November of each even-numbered calendar year.

(b)(1) Each member of an Advisory Neighborhood Commission shall serve for a term of 2 years which shall begin at noon on the 2nd day of January next following the date of election of such member, or at noon on the day after the date the Board certifies the election of such member, whichever is later.

(2) Repealed.

(3) Each member of an Advisory Neighborhood Commission holding office at August 2, 1983, shall continue in office until noon on the 2nd day of January next following the date of the election provided for in paragraph (2) of this subsection.

(c) Repealed.

(d)(1) Whenever a vacancy exists in the office of a Commissioner, and the vacancy does not occur within the 6-month period prior to a general election, the vacancy shall be filled pursuant to paragraph (6) of this subsection. No vacancy shall be filled if it occurs within the 6-month period prior to a general election.

(2) For purposes of this section, a vacancy is deemed to exist upon the publication of a notice of the vacancy in the District of Columbia Register.

(3) Within 90 days of the date that the Board declares a vacancy, the members of the Advisory Neighborhood Commission area where the vacancy exists shall fill the vacancy pursuant to paragraph (6) of this subsection.

(4) Each person appointed or elected to fill a vacancy shall meet the qualifications set forth in § 1-256(a).

(5) Each person appointed or elected to fill a vacancy shall serve until a successor has been certified and sworn in pursuant to subsection (b) of this section.

(6)(A) Within 5 days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares a vacancy, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the affected single-member district.

(B) In the event petitions are not obtained by any registered qualified elector within the affected single-member district within 7 working days after the petitions have been made available, the Board shall recertify the vacancy by republishing the notice required by paragraph (2) of this subsection.

(C) Within 21 days of the date the Board makes the petitions available, persons interested in filling the vacancy shall submit a petition to the Board that contains the signatures of at least 25 registered qualified electors within the affected single-member district. The Board, after a 5-working-day chal-

lenge period, shall transmit a list of the names of persons who qualify for appointment to the affected Advisory Neighborhood Commission area.

(D) If there is only one person qualified to fill the vacancy within the affected single-member district, the area Advisory Neighborhood Commissioners shall appoint the qualified person to the vacant Advisory Neighborhood Commissioner position at its next regularly scheduled meeting.

(E) If the Board transmits a list of qualified candidates containing more than one name, the affected area Advisory Neighborhood Commission shall give notice at a public meeting that at the next regularly scheduled meeting there shall be an open vote of the members of the affected single-member district to elect the new commissioner. All registered qualified electors shall display their voter identification card or, alternatively, be listed on the voter registration list (provided by the Board) as a voter in the affected single-member district. The ballots shall be counted by at least two impartial vote counters. The results shall be read aloud by the Chair of the Advisory Neighborhood Commission, or alternatively, by such commissioners as the Chair shall designate.

(F) After a vacancy has been filled pursuant to this subsection, the affected area Advisory Neighborhood Commission shall transmit to the Board a resolution signed by the Chairman and Secretary of the Advisory Neighborhood Commission that states the winner of the Advisory Neighborhood Commissioner SMD election and requests that the Board declare the vacancy filled. The resolution shall also be sent to the following:

- (i) The Council of the District of Columbia;
- (ii) The Mayor; and
- (iii) The person appointed or elected by the Commission.

(G) The Board shall certify the filling of the vacancy by publication in the District of Columbia Register.

(e) Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant.

(f)(1) Any member of an Advisory Neighborhood Commission who resigns from the single-member district from which he or she is elected shall submit a copy of the letter of resignation to: (A) The Board of Elections and Ethics; (B) the Council of the District of Columbia, and the Mayor; and (C) the Chairperson of the member's Advisory Neighborhood Commission. The District of Columbia Board of Elections and Ethics shall then declare the vacancy.

(2) When a vacancy occurs on an Advisory Neighborhood Commission and no letter of resignation is submitted as required by paragraph (1) of this subsection, the respective Advisory Neighborhood Commission shall petition the District of Columbia Board of Elections and Ethics, by a resolution signed by the Chairman and the secretary of the Advisory Neighborhood Commission, to declare the vacancy. The resolution shall be considered by the Commission at a public meeting of the Commission. Prior to the meeting, the Commission shall make a good faith effort to notify, in writing, the Commissioner who is the subject of the resolution. Notice of the meeting shall be sent to the Commissioner no later than 20 days prior to the meeting by certified mail, return

receipt requested, and shall provide that the Commissioner shall have an opportunity to rebut the alleged vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to: (A) The District of Columbia Board of Elections and Ethics, (B) the Council of the District of Columbia, and the Mayor, and (C) the Commissioner, whenever the vacancy is due to removal or failure to continue the qualifications for office under § 1-256(a).

(3)(A) Any qualified elector may, within a 10-day period, challenge the validity of the resolution filed under paragraph (2) of this subsection, by a written statement duly signed by the challenger, filed with the District of Columbia Board of Elections and Ethics and specifying concisely the alleged defects in said resolution. A copy of the challenged statement shall be sent by the District of Columbia Board of Elections and Ethics to the Chairperson of the petitioning Advisory Neighborhood Commission.

(B) The District of Columbia Board of Elections and Ethics shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged resolution not more than 30 days after the challenge has been filed. Within 3 days after the announcement of the determination of the District of Columbia Board of Elections and Ethics with respect to the validity of the resolution, either the challenger or the affected single-member district commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination.

(C) The District of Columbia Court of Appeals shall expedite consideration of the determination. The decision of such Court shall be final and not appealable.

(D) If the resolution is found to be valid, then the District of Columbia Board of Elections and Ethics shall declare the vacancy.

(4) Any member of an Advisory Neighborhood Commission may resign prospectively by submitting an irrevocable letter of prospective resignation to the Board, with copies to the Council of the District of Columbia, the Mayor, and the Chairperson of the member's Advisory Neighborhood Commission. The letter shall be sworn, state that it is irrevocable, and give the date that the resignation shall become effective. The resignation shall become effective not more than 60 days following receipt of the letter by the Board. Upon receipt of such letter the Board shall declare the prospective vacancy and proceed to fill it as provided in subsection (d) of this section.

(5) The Board shall have the authority to declare and certify a vacancy on its own initiative, without regard to paragraphs (1) or (2) of this subsection, when:

(A) The office of a Commissioner remains vacant after a general or special election; or

(B) The Board determines, through its established procedures for the maintenance of the voter registration roll, that a Commissioner is no longer a registered qualified elector actually residing in the single-member district from which the Commissioner was elected.

(g) Repealed.

(h) The Board shall maintain a list of the names and home addresses of all members of the Advisory Neighborhood Commissions.

(1) This list shall be published at least annually in the District of Columbia Register. This list shall also be provided by the Board to the Alcoholic Beverage Control Board and to any other government agency that requests it.

(2) Any change, which may be due to resignation, election, moving, or for any other reason, shall be reported when it occurs by the Board to the Alcoholic Beverage Control Board and to any other government agency that requests it. (1973 Ed., § 1-171e; Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(b), 24 DCR 3336; Sept. 8, 1979, D.C. Law 3-15, § 2, 25 DCR 11003; June 23, 1981, D.C. Law 4-14, § 2(b), 28 DCR 2132; Aug. 2, 1983, D.C. Law 5-17, § 2, 30 DCR 3196; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (c), 31 DCR 3952; Sept. 26, 1984, D.C. Law 5-116, § 3, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 2, 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 3(b), 37 DCR 8420; Mar. 11, 1992, D.C. Law 9-75, § 3, 39 DCR 310; Oct. 3, 1992, D.C. Law 9-174, § 3(a), 39 DCR 5859; Sept. 30, 1993, D.C. Law 10-18, § 2, 40 DCR 5455; Sept. 22, 1994, D.C. Law 10-173, § 3, 41 DCR 5154; Oct. 26, 1995, D.C. Law 11-66, § 2, 42 DCR 4324.)

Cross references. — As to general election for members of Board of Education, see § 1-1314.

Section references. — This section is referred to in §§ 1-262, 1-268 and 1-1321.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 2-16. — See note to § 1-252.

Legislative history of Law 3-15. — Law 3-15 was introduced in Council and assigned Bill No. 3-26, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 18, 1979, it was assigned Act No. 3-55 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-14. — See note to § 1-254.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — See note to § 1-252.

Legislative history of Law 5-116. — See note to § 1-251.

Legislative history of Law 7-92. — Law 7-92 was introduced in Council and assigned Bill No. 7-321, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on December 8, 1987 and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — See note to § 1-264.1.

Legislative history of Law 9-75. — Law 9-75 was introduced in Council and assigned Bill No. 9-242, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on January 3, 1992, it was assigned Act No. 9-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-174. — Law 9-174, the "Alcoholic Beverage Control Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-125, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 27, 1992, it was assigned Act No. 9-280 and transmitted to both Houses of Congress for its review. D.C. Law 9-174 became effective on October 3, 1992.

Legislative history of Law 9-257. — Law 9-257, the "Election Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-750. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-405 and transmitted to both Houses of Congress for its review. D.C. Law 9-257 became effective on March 25, 1993.

Legislative history of Law 10-18. — Law 10-18, the “Advisory Neighborhood Commission Vacancy Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-76, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-50 and transmitted to both Houses of Congress for its review. D.C. Law 10-18 became effective on September 30, 1993.

Legislative history of Law 10-173. — Law 10-173, the “National Voter Registration Act Conforming Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-572, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-293 and transmitted to both Houses of Congress for its review. D.C. Law 10-173 became effective on September 22, 1994.

Legislative history of Law 11-17. — Law 11-17, the “Advisory Neighborhood Commission Special Election Repeal Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-96. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 21, 1995,

it was assigned Act No. 11-31 and transmitted to both Houses of Congress for its review. D.C. Law 11-17 became effective on May 27, 1995.

Legislative history of Law 11-66. — Law 11-66, the “Advisory Neighborhood Commission Vacancy Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-113, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 1995, and July 29, 1995, respectively. Signed by the Mayor on August 9, 1995, it was assigned Act No. 11-129 and transmitted to both Houses of Congress for its review. D.C. Law 11-66 became effective on October 26, 1995.

Expiration of Law 11-66 — Section 3(b) of D.C. Law 11-66 provided that the act shall expire on Sept. 30, 1999.

References in text. — “Paragraph (2) of this subsection”, which established the term of members elected in 1984, referred to in (b)(3), was repealed by D.C. Law 5-116, § 3(b), effective September 26, 1984.

Notice was reasonably calculated to apprise petitioner of date of election result certification. — District of Columbia Board of Elections and Ethics provided notice reasonably calculated to apprise petitioner of the date when the Board certified the election results. *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

§ 1-258. Same — Determination of election winners.

The candidate in each single-member district receiving the highest number of votes cast in such election shall be declared the winner, except that in the case of a tie the procedures set forth in § 1-1314(c) shall govern. (1973 Ed., § 1-171f; Oct. 10, 1975, D.C. Law 1-21, § 9, 22 DCR 2071.)

Legislative history of Law 1-21. — See note to § 1-252.

Eligibility of candidate. — Where petitioner met all legal requirements for access to the ballot, and where her candidacy was never officially challenged during the challenge period, she met all requirements necessary to ensure her place on the ballot and was therefore a candidate within the meaning of this section. *Bates v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 625 A.2d 891 (1993).

Winning candidate ineligible. — This sec-

tion cannot be read to permit the Board of Elections and Ethics to certify as a winner a candidate who did not receive the greatest number of votes in an election; therefore, where a candidate who receives the most votes is actually not eligible to fill the position, a special election should be held to fill the vacancy. *Bates v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 625 A.2d 891 (1993).

Cited in *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

§ 1-259. Boundary changes.

(a) Petitions for changes in the boundaries of an Advisory Neighborhood Commission area or single-member district within any such area may be filed with the Council of the District of Columbia during the month of January of the

year in which elections for Advisory Neighborhood Commissions are to be held. Such petitions must be signed by at least 5 percent of the registered qualified electors of such Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission have signed such a petition, the Council shall, after public hearing, accept or reject such petition.

(c) The Council shall accept or reject such a petition within 3 months after its receipt. (1973 Ed., § 1-171g; Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 5-111. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

§ 1-260. Conduct of elections.

(a) The Board is authorized to conduct the elections provided for in this act and to adopt, amend, repeal, and enforce such regulations as are deemed necessary to carry out the provisions of this act. The Board shall conduct such elections in the same manner as elections held under Chapter 13 of this title.

(b) For the purposes of this act, the term “registered qualified elector” means a qualified elector, as defined in § 1-1302, registered under § 1-1311. (1973 Ed., § 1-171h; Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072; June 19, 1976, D.C. Law 1-72, § 7, 23 DCR 578.)

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-72. — See note to § 1-265.

References in text. — “This act,” referred to in this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

Notice was reasonably calculated to ap-

prise petitioner of date of election result certification. — District of Columbia Board of Elections and Ethics provided notice reasonably calculated to apprise petitioner of the date when the Board certified the election results. *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

§ 1-261. Advisory Neighborhood Commissions — Duties and responsibilities.

(a) Each Advisory Neighborhood Commission (hereinafter in §§ 1-261 to 1-264 the “Commission”) may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 1-1506(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

(c)(1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agency. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

(2) The Alcoholic Beverage Control Board shall give notice to Advisory Neighborhood Commissions at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located. The Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Licenses, Investigation and Inspections shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-262(c) which is open to the public in accordance with § 1-262(g). At the close of business of the 31st day from mailing of such written notice or earlier

if such limited publication has been provided, the affected District government entity may proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken. "Great weight" requires acknowledgement of the Commission as the source of the recommendations, and requires explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each.

(e) Repealed.

(f) Each Commission may present its views to any federal or District agency.

(g) The Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required.

(h) Each Commission may initiate its own proposal for District government action. The District government entity to which the proposal is made shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 90 days of receipt.

(i) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to Commissioner's Order No. 71-370 that are material to the exercise of its development of recommendations to the District government.

(j)(1) On or before November 30 of each year, each Commission shall file an annual report with the Council of the District of Columbia and the Mayor for the preceding fiscal year. Such report shall include, but shall not be limited to:

(A) Summaries of important problems perceived by the Commission and in the order of their priority;

(B) Recommendations for actions to be taken by District government;

(C) Recommendations for improvements on the operation of the Commissions;

(D) Financial report; and

(E) Summary of Commission activities.

(2) Minority reports may be filed.

(k) Other than neighborhood or community enhancement campaigns, Commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the Commissions do not duplicate already available programs or services, and further provided that the Commissions' programs are not conducted on a contractual basis with existing governmental agencies.

(l) No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$400 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that

person, exceeds \$400 per calendar year. Each Commission shall include in the Commission's annual report required pursuant to subsection (j) of this section a report of all contributions received in the previous fiscal year.

(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of the District government services and file comments on same with the appropriate District government entity as well as the Council.

(n) Each Commission shall develop an annual fiscal year spending plan budget for the upcoming fiscal year and submit the budget to the Mayor and Council within 60 days of notification of the amount of the Commission's annual allotment. Prior to adoption of the budget at a public meeting of the Commission and submission of the budget to the Mayor and Council, the Commission shall present the budget at a public meeting of the Commission to elicit comments from the residents of the Commission area.

(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by federal statute). (1973 Ed., § 1-171i; Oct. 10, 1975, D.C. Law 1-21, § 13, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5454; Apr. 19, 1977, D.C. Law 1-120, § 3, 23 DCR 9924; Oct. 26, 1977, D.C. Law 2-30, § 2(a), (b), 24 DCR 3723; Apr. 30, 1988, D.C. Law 7-104, § 37, 35 DCR 147; Mar. 6, 1991, D.C. Law 8-203, § 3(c), 37 DCR 8420; Oct. 3, 1992, D.C. Law 9-174, § 3(b), 39 DCR 5859; Apr. 29, 1998, D.C. Law 12-91, § 2(a), 45 DCR 1312.)

Cross references. — As to authorization for Mayor to sell public lands, see § 9-401.

Section references. — This section is referred to in §§ 1-261 and 9-401.

Effect of amendments. — D.C. Law 12-91, in (d), deleted the former second sentence.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-58. — Law 1-58 was introduced in Council and assigned Bill No. 1-193, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on December 2, 1975 and December 16, 1975, respectively. Signed by the Mayor on January 9, 1976, it was assigned Act No. 1-85 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-120. — Law 1-120 was introduced in Council and assigned Bill No. 1-340, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 1, 1977, it was assigned Act No. 1-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-30. — Law 2-30 was introduced in Council and assigned Bill No. 2-72, which was referred to the Committee on Advisory Neighborhood Commis-

sions. The Bill was adopted on first and second readings on June 28, 1977 and July 12, 1977, respectively. Signed by the Mayor on August 5, 1977, it was assigned Act No. 2-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — See note to § 1-264.1.

Legislative history of Law 9-174. — See note to § 1-257.

Legislative history of Law 12-91. — Law 12-91, the "Advisory Neighborhood Commissions Quorum Definition Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-263, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-263 and transmitted to both Houses of Congress for its review. D.C. Law 12-91 became effective on April 29, 1998.

Authorization for the solicitation and acceptance of grant monies by Advisory Neighborhood Commission 2D. — Pursuant to §§ 2 and 3 of D.C. Law 10-130, the Council authorized Advisory Neighborhood Commission 2D to solicit and accept grant monies for the funding of an employee to research development proposals within its boundaries. Section 4(b) of D.C. Law 10-130 provided that the act expires on December 31, 1995.

References in text. — “This act,” referred to in subsections (a) and (c) of this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

Commissioner’s Order No. 71-370, referred to in subsection (i), was repealed and replaced by Mayor’s Order No. 76-109 which was repealed by § 4 of the Act of March 29, 1977, D.C. Law 1-96.

Transfer of functions. — The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Satisfaction of notice requirements. — List of building permit applications sent to Area Neighborhood Commission satisfied notice requirements of subsection (c)(3). *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

Due process protections not afforded Area Neighborhood Commissions with respect to District actions. — Area Neighborhood Commissions are political subdivisions of the District of Columbia government and therefore do not receive due process protections under the Constitution against actions of the District of Columbia. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

District’s failure to provide adequate notice of building permit applications to Area Neighborhood Commissions would establish only a statutory violation of this section, not a due process violation. *Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 550 A.2d 331 (1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843 (1989).

Suicide barriers on historic bridges. — The basic legislative purpose of the Historic Protection Act was to provide a comprehensive system of protection for historic sites, but the entire act would be rendered a nullity as to historic bridges if its protections could be evaded through the simple expedient of not applying for a building permit before altering those bridges. *Butler v. District of Columbia*

Dep’t of Pub. Works, 115 WLR 949 (Super. Ct. 1987).

Section does not require special deference to views of Neighborhood Commission; it requires that an agency address a Commission’s concerns with particularity. *Committee for Washington’s Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

Decision of Historic Preservation Review Board. — The court had no authority to vacate a decision of the Historic Preservation Review Board where there was a technical violation of the Advisory Neighborhood Commissions (ANC) statute, § 1-261 et seq., not by the Board but exclusively by the ANC itself. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Where the Historic Preservation Review Board’s written decision does not comply with the specific statutory mandate requiring the Board to give “great weight” to the opinion or position of an Advisory Neighborhood Commission (ANC), violation of this requirement is to be remedied with a remand of the case to the agency, so that it can properly consider the ANC’s position and supplement its final decision appropriately. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

“Great weight” to be accorded views of Advisory Neighborhood Commissions. — Subsection (d) of this section requires the Alcoholic Beverage Control Board to give “great weight” to the issues and concerns raised by an Advisory Neighborhood Commission. *Foggy Bottom Ass’n v. District of Columbia ABC Bd.*, App. D.C., 445 A.2d 643 (1982).

Intent of “great weight” provision was to assure that neighborhood views, expressed through the Advisory Neighborhood Commissions, would receive specific attention by government agencies. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

This section is a statutory method of forcing an agency to come to grips with the Advisory Neighborhood Commission’s view — to deal with it in detail. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

“Great weight” construed. — The requirement of this section that “great weight” be given to the views of an Advisory Neighborhood Commission implies that explicit reference should be given by the governmental agency to each Advisory Neighborhood Commission issue and concern as such, that specific findings and conclusions with respect to each issue and concern should be made, and that the Advisory Neighborhood Commission be acknowledged as the source of the issue or the concern. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977), aff’d, App. D.C., 413 A.2d 152 (1980); *Wheeler v. District of Columbia Bd. of*

Zoning Adjustment, App. D.C., 395 A.2d 85 (1978); *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 437 A.2d 176 (1981); *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982); *Donnelly v. District of Columbia ABC Bd.*, App. D.C., 452 A.2d 364 (1982); *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

The "great weight" requirement in subsection (d) of this section means that an agency must elaborate with precision its response to the Advisory Neighborhood Commission's issues and concerns and deal with them in detail; the agency must articulate why the particular Advisory Neighborhood Commission itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978); *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

"Great weight" means that a board must elaborate, with precision, its response to the Advisory Neighborhood Commission (ANC) issues and concerns; in other words, a board must make explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each. *Neighbors United For A Safer Community v. Board of Zoning Adjustment*, App. D.C., 647 A.2d 793 (1994).

That the board of zoning adjustment is obligated to give "great weight" to the views of the advisory neighborhood commission implies explicit reference to each advisory neighborhood commission issue and concern, as well as specific findings and conclusions with respect to each. *Neighbors on Upton St. v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 697 A.2d 3 (1997).

Entitlement to "great weight." — It would be manifestly unreasonable to conclude that an area represented by an Advisory Neighborhood Commission (ANC) which is physically located directly across the street from a proposed facility for which a special exception is sought would not be affected by it; therefore, the written recommendations of that ANC are entitled to great weight. *Neighbors United For A Safer Community v. Board of Zoning Adjustment*, App. D.C., 647 A.2d 793 (1994).

Deference to be given to ANC views. — The Board of Zoning Adjustment (BZA) must also address and make specific findings on each issue raised by the Advisory Neighborhood Commission (ANC), but the agency is not required to defer to the ANC's views, it must only address ANC concerns with particularity. *Gladson v. District Bd. of Zoning Adjustment*, App. D.C., 659 A.2d 249 (1995).

Failure to give "great weight" to Commission's recommendations upheld. — Because § 1-251(d) and subsection (c) of this section do not include utility ratemaking among the matters about which Advisory Neighborhood Commissions (ANCs) are entitled to special notice, it follows that the Public Service Commission did not err in failing to give "great weight" to the advice it actually received from ANCs and from individual ANC Commissioners. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 630 A.2d 692 (1993).

Written recommendations of Advisory Neighborhood Commission. — This section does not require the Board of Zoning Adjustment to give "great weight" to oral testimony, but only to the written recommendations of the Advisory Neighborhood Commission. *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 403 A.2d 291 (1979).

The "great weight" requirement pertains only to the written recommendations of the affected Advisory Neighborhood Commission (ANC) and not to its oral testimony. *Neighbors United For A Safer Community v. Board of Zoning Adjustment*, App. D.C., 647 A.2d 793 (1994).

Legal relevance of issues. — Since the issues and concerns identified by both the Office of Planning and the Advisory Neighborhood Commission (ANC) related only to whether or not a variance should be granted, not whether a variance was required in the first place, they were not "legally relevant" unless the Board of Zoning Adjustment (BZA) ruled that it required a variance. Because the BZA concluded otherwise, the issues raised by the ANC and the Office of Planning never became "legally relevant." *Concerned Citizens v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 634 A.2d 1234 (1993).

Effect of Kopff case on prior agency decisions. — For cases in which an administrative determination was made prior to *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977), if the record reveals that the agency was cognizant of and paid attention to the pertinent and specific neighborhood issues and concerns raised by the Advisory Neighborhood Commissions, then the court will not reverse merely because the decision does not satisfy the specific prescriptions of *Kopff*. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 395 A.2d 85 (1978).

The *Kopff* decision interpreting the "great weight" standard does not apply to administrative determinations rendered by agencies prior to the decision in *Kopff*. *Lee v. District of Columbia Zoning Comm'n*, App. D.C., 411 A.2d 635 (1980).

ABC Board must carefully consider Advisory Neighborhood Commission's recommendations concerning renewal of li-

quor license; so long as the Board makes explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each, it meets the requirements of subsection (d) of this section; it is not obliged to follow the ANC's recommendations or adopt its views. *Upper Ga. Ave. Planning Comm. v. ABC Bd.*, App. D.C., 500 A.2d 987 (1985).

Failure to address ANC concerns with particularity grounds for remand. — While an agency is not required to defer to Advisory Neighborhood Commission views, failure to address ANC concerns with particularity is grounds for a remand even if other procedural requirements are met. *Levy v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 570 A.2d 739 (1990).

Notice given by Alcoholic Beverage Control Board. — Failure of the Alcoholic Beverage Control Board to give special notice to an affected Advisory Neighborhood Commission before it issued a liquor license was error. However, such error may be cured when actual notice is given to the affected Commissions by individual remonstrants. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977).

Application of notice requirements. — The former 30 day notice (now 45 days) of subsection (c) of this section applies only to the body of proceedings arising from a permit application; the "reasonable notice" requirement of § 1-1509(a) governs each stage of the proceedings. *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

Subsection (c) expands the category of situations requiring special notice to Advisory Neighborhood Commissions beyond the legislative activities designated in subsection (a), and this expanded category includes certain — but not all — adjudicative proceedings. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 630 A.2d 692 (1993).

Advisory Neighborhood Commissions are not entitled to special notice of an adjudicative proceeding unless the proceeding concerns a matter specifically listed in subsection (c). *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 630 A.2d 692 (1993).

Notice requirement for hearing on remand. — A remand for a new hearing makes appropriate the notice requirements of a new hearing, rather than the notice requirements of a continuation of an existing hearing. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 413 A.2d 152 (1980); *Committee for Washington's Riverfront Parks v. Thompson*, App. D.C., 451 A.2d 1177 (1982).

Real party in interest. — The Advisory Neighborhood Commission (ANC) is the real

party in interest, with standing to complain about lack of adequate notice from the Historic Preservation Review Board; the Mayor would be the real party in interest to complain about the untimely receipt of an ANC resolution. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Standing to seek court review. — An Advisory Neighborhood Commission has no capacity to seek court review of an action of the District of Columbia Alcoholic Beverage Control Board in issuing a liquor license; area residents who were Commission members, however, have standing to initiate such review and to assert rights of the Commission itself. *Kopff v. District of Columbia ABC Bd.*, App. D.C., 381 A.2d 1372 (1977).

Subsection (g) of this section makes clear that the Commission is precluded from seeking judicial review of an administrative proceeding. *Don't Tear It Down, Inc. v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 428 A.2d 369 (1981).

Standard of review. — A Board of Zoning Adjustment (BZA) decision will be upheld if there is a rational basis for it and if the facts found by the Board have "substantial support in the evidence." *Gladden v. District Bd. of Zoning Adjustment*, App. D.C., 659 A.2d 249 (1995).

Cited in *Spevak v. District of Columbia ABC Bd.*, App. D.C., 407 A.2d 549 (1979); *Sheridan-Kalorama Neighborhoods Council v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 411 A.2d 959 (1979); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *Shiflett v. District of Columbia Bd. of Appeals & Review*, App. D.C., 431 A.2d 9 (1981); *Haight v. District of Columbia ABC Bd.*, App. D.C., 439 A.2d 487 (1981); *Georgetown Entertainment Corp. v. District of Columbia*, App. D.C., 496 A.2d 587 (1985); *Gerber v. District of Columbia ABC Bd.*, App. D.C., 499 A.2d 1193 (1985); *Eastland Gardens Civic Ass'n v. District of Columbia*, 113 WLR 969 (Super. Ct. 1985); *National Trust for Historic Preservation v. Dole*, 828 F.2d 776 (D.C. Cir. 1987); *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 524 A.2d 759 (1987); *Tenley & Cleveland Park Emergency Comm. v. District of Columbia*, 115 WLR 1989 (Super. Ct. 1987); *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 534 A.2d 310 (1987); *Park v. District of Columbia ABC Bd.*, App. D.C., 555 A.2d 1029 (1989); *Beins v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 572 A.2d 122 (1990); *Draude v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 582 A.2d 949 (1990); *Foggy Bottom Ass'n v. District of Columbia Zoning Comm'n*, App. D.C., 639 A.2d 578 (1994).

§ 1-262. Same — Meetings; bylaws governing operation and internal structure; officers.

(a) Repealed.

(b) Each Commission shall meet in public session at regular intervals at least 9 times per year at locations that are designed to reasonably accommodate the residents of the Commission area, depending on the issues to be considered by the Commission. A Commission may declare a quorum and take official action if a majority of elected representatives of the Commission is present, provided that a majority of the single-member districts have representatives on the Commission pursuant to § 1-257. To the extent possible, each Commission shall, at its first meeting of the calendar year, adopt a schedule of regular Commission meetings for the remainder of the calendar year. Each Commission shall, at its public meetings, consider and make recommendations on matters before the Commission that may include, but are not limited to, actions or proposed actions of the Council, the Mayor, executive branch agencies, or any independent agency, board, or commission. Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission. Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.

(c) Each Commission shall give notice of all meetings or convocations to each Commission member and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings may be given by:

- (1) Posting written notices in at least 2 conspicuous places in each single-member district within the Commission area;
- (2) Publication in a city or community newspaper;
- (3) Mailing notice to a mailing list; and
- (4) In any other manner directed by the Commission.

(d) Each Commission shall establish bylaws governing its operation and internal structure.

(1) These bylaws shall include a statement of Commission responsibilities, voting procedures, the establishment of standing and special committees, the manner of selection of chairpersons and other officers, procedures for prompt review and action on committee recommendations and procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels. Said bylaws shall be consistent with the provisions of this act and other applicable laws and shall be a public document.

(2) An up-to-date copy of each Commission's bylaws and all amendments thereto shall be filed with the Council of the District of Columbia within 30

days of any amendment to the bylaws. No Commission shall be entitled to incorporation, provided that no member of the Commission may be liable for action taken as an elected representative from a single-member district.

(e) Each Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, secretary, and treasurer. Each Commission may also elect any other officers the Commission deems necessary. The Chairperson shall serve as convenor of the Commission and shall chair the Commission meetings. The vice-chairperson shall fulfill the obligations of the Chairperson in the Chairperson's absence. The secretary shall ensure that appropriate minutes of Commission meetings are kept and that appropriate notice of Commission meetings is provided in accordance with subsection (c) of this section. The treasurer shall perform the duties provided for in § 1-264. The views or recommendations of each Commission shall only be presented by its officers, Commissioners, or representatives appointed by the Commission at a public meeting to represent the Commission's views on a particular issue or proposed action. Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order.

(f) Chairmanship of each Commission committee or task force shall be open to any resident of the Commission area. The chairperson of each such committee or task force shall be appointed by the Commission. Each Commission shall make a good faith effort to involve all segments of the Commission population in its deliberations regardless of race, sex, age, voting status, religious or economic status.

(g) Each Commission shall be subject to the provisions of § 1-1504(a). (1973 Ed., § 1-171j; Oct. 10, 1975, D.C. Law 1-21, § 14, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5460; Sept. 26, 1984, D.C. Law 5-111, § 2(d), 31 DCR 3952; Mar. 6, 1991, D.C. Law 8-203, § 3(d), 37 DCR 8420; Apr. 29, 1998, D.C. Law 12-91, § 2(b), 45 DCR 1312.)

Section references. — This section is referred to in § 1-261.

Effect of amendments. — D.C. Law 12-91, in (b), inserted the second sentence.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-58. — See note to § 1-261.

Legislative history of Law 5-111. — See note to § 1-252.

Legislative history of Law 8-203. — See note to § 1-264.1.

Legislative history of Law 12-91. — See note to § 1-261.

References in text. — "This act," referred to in subsection (d)(1) of this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

Cited in Dwyer v. District of Columbia, 120 WLR 2609 (Super. Ct. 1992).

§ 1-263. Same — Joint meetings; involvement of neighborhood groups; service area coordinators; service area manager; citizen's advisory mechanism.

(a) Commissions may meet jointly either formally or informally to deal more effectively with or respond to common issues and concerns. A Commissioner of an individual Commission may represent and participate in a formal joint meeting only after the individual Commission has authorized the participation

of the Commission in the joint meeting. The Commissioner selected by the individual Commission to represent the Commission at a formal joint meeting may only vote on issues or concerns that have been discussed at a public meeting of the Commission and on which the Commission has voted to take a formal position. The Commissioner selected by the individual Commission to represent the Commission at a formal joint meeting shall, in the Commissioner's official capacity, follow the general direction of the individual Commission in all discussions at a formal joint meeting.

(b) Each Commission may involve representatives of other neighborhood groups in the work of its standing or special committees.

(c) The Mayor shall appoint a service area coordinator for each ward who shall act as the chairperson of the service area committee in that ward and shall coordinate all District government services at the ward level to residents of the ward. The head of each District government department or agency which delivers services at the ward level shall appoint a service area manager who shall oversee the day-to-day operations of the department or agency within the ward and shall represent that department or agency on the service area committee of that ward. The service area coordinators and managers shall work closely with the Commissions in their service area ward and shall provide them with any technical assistance necessary to the performance of their duties and responsibilities.

(d)(1) The Council may assist the individual Commissions in the following areas:

(A) Dispute resolution between the entities of the District government and the individual Commissions to facilitate the advisory process;

(B) Providing the training to Commissioners with respect to the procedures and content of District laws, including, but not limited to, laws governing zoning and licenses to sell alcohol; and

(C) Any other assistance necessary and feasible to enable the Commissions to perform their statutory duties.

(2) The District of Columbia Auditor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

(A) Review of quarterly financial reports to ensure compliance with current law; and

(B) Monitoring of Commission expenditures and responses to inquiries from individual Commissions on the legality of proposed actual expenditures.

(3) The Mayor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

(A) Legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations are to be obtained from the Corporation Counsel and may be requested directly by any Commission;

(B) Liaison efforts between the individual Commissions and District government entities to ensure responsiveness to Commission requests and compliance with current law; and

(C) Any other assistance necessary to ensure that a Commission is able to perform its statutory duties.

(e) Whenever a District agency is required to establish a citizen's advisory mechanism, appointments to that mechanism shall be made in such a manner as to ensure as far as possible the equal representation on the mechanism of each electoral ward, provided that, members of the advisory mechanism possess skills relevant to the tasks for which the advisory mechanism was established and, in the event that the size of the advisory mechanism requires the appointment of more than 1 person per ward, ward appointments shall be made in such a manner so as to ensure as far as possible a fair representation of each Commission area. (1973 Ed., § 1-171k; Oct. 10, 1975, D.C. Law 1-21, § 15, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5463; Mar. 6, 1991, D.C. Law 8-203, § 3(e), 37 DCR 8420.)

Section references. — This section is referred to in § 1-261.

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-58. — See note to § 1-261.

Legislative history of Law 8-203. — See note to § 1-264.1.

§ 1-264. Same — Funds; audit of accounts; employees; financial reports; publications.

(a) Each Commission shall receive an annual allocation pursuant to § 1-251(e) to be distributed quarterly during the fiscal year, except that if the District's appropriations act for the fiscal year has not become effective at the beginning of the fiscal year, each Commission shall receive its 1st quarterly allocation for the fiscal year if and when a continuing resolution is adopted by the Congress of the United States.

(b) Each Commission shall by resolution designate a commercial bank, savings and loan association, credit union, or any combination thereof, which is insured by the government of the United States pursuant to the Federal Deposit Insurance Act, approved September 21, 1950 (87 Stat. 873; 12 U.S.C. 1811 et seq.), and which is located within the District of Columbia, as a depository of all funds received by the Commission. Each Commission shall establish no more than one checking or negotiable order of withdrawal account. The Commission may deposit into any savings account created pursuant to this section funds not immediately needed for the operation of the Commission.

(c) The treasurer of each Commission shall file with the Office of the District of Columbia Auditor, within 30 days of assuming the office of treasurer or within 30 days of any change in the requested information, on a form provided by the Auditor, a statement that includes the treasurer's name, home and business address and telephone number, the location of the books and records of the Commission and the name and location of any depository of the Commission's funds, including account numbers. The treasurer shall file with the District of Columbia Auditor and maintain in force during the treasurer's occupancy of the office a cash or surety bond in an amount and on a form satisfactory to the Auditor. Participation by a Commission in the Advisory Neighborhood Commission Security Fund established by § 1-264.1 shall satisfy the requirement of a cash or surety bond. The bylaws adopted by each Commission shall include a provision for filling in a timely manner a vacancy

in the office of treasurer from among the remaining Commissioners. No expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the District of Columbia Auditor.

(d) The District of Columbia Auditor shall audit the financial accounts of selected Commissions and maintain a database of financial information of each Commission for historical and expenditure trend analysis. The Auditor shall produce and submit to the Council a consolidated annual report of the financial activity of all the Commissions. The Auditor may audit the financial accounts of a Commission, at the discretion of the Auditor, upon the request by a member of the Council or a Commissioner of the Commission for which an audit is requested.

(e) Each Commission shall, by resolution, designate the location at which the Commission's books and records shall be maintained which shall, if the Commission has a regular office, be the Commission office. The District of Columbia Auditor shall have access to the books and records of each Commission pursuant to § 47-117(c), and may issue subpoenas to banking and financial institutions requiring the production of financial documents and statements pursuant to an audit conducted under §§ 1-252 through 1-264.1. Such financial documents shall include, but not be limited to, bank statements, cancelled checks, and signature cards. The District of Columbia Auditor may apply to the Superior Court of the District of Columbia for an order enforcing the subpoena. Any failure to obey the order of the court may be punished by the Superior Court as civil contempt.

(f) Any expenditure of funds by a Commission shall be authorized in writing by the treasurer or Chairman and recorded by the treasurer in the Commission's books of accounts. No expenditure of any amount shall be made without the specific authorization of the Commission. Any expenditure made by check shall be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairman. The check shall, prior to signature, contain the date of payment, the name of the payee, and the amount of the payment. No check may be made payable to cash. Any check shall be pre-numbered, shall bear the name of the Commission on its face, and shall be issued in consecutive order. The depository in which the Commission maintains a checking account shall be immediately notified of any change in Commission officers.

(g) Disbursements of Commission funds exceeding \$50 for personal service expenditures shall be specifically approved by the Commission at a public meeting prior to the disbursement. The approval shall be recorded in the minutes of the Commission meeting. Any personal services payment shall name the person who is to receive the payments, the rate of compensation, and the maximum hours of service, if less than full-time compensation. If an expenditure required to be approved pursuant to this subsection is made without the required authorization of the Commission, the expenditure shall be deemed to be a personal expense of the officer who authorized the payment, unless the Commission subsequently approves the expenditure.

(h) Each Commission may establish a petty cash fund not to exceed \$50 at any one time in accordance with procedures established for imprest funds by

the D.C. Controller. The fund shall be reimbursed by the treasurer upon presentation of appropriate supporting documents. The treasurer may disburse to another Commission member or employee of the Commission an amount not in excess of \$50 for authorized Commission expenditures through a Commission-established petty cash fund. A record of disbursements from the petty cash fund shall be kept by the treasurer in a manner consistent with other accounts of the Commission.

(i) A Commission shall maintain its accounts on a fiscal year basis beginning October 1 and ending the following September 30.

(j)(1) The treasurer of a Commission shall prepare a quarterly financial report on a form provided by the Auditor. The financial report shall be presented to the Commission for its consideration at a public meeting of the Commission within 30 days of the end of the quarter. A copy of the approved financial report, signed by the Chairman, the secretary, and the treasurer, shall be filed, along with a record of the vote adopting the report, with the District of Columbia Auditor within 7 days of approval. A financial report shall be available for public inspection during the normal office hours of the Commission.

(2) No quarterly allotment shall be forwarded to a Commission until all reports of financial activity for the quarters preceding the immediate previous quarter are approved by the Auditor.

(3) If, on the last day of the fiscal year, a Commission has not received a quarterly allotment because it failed to file a quarterly report approved by the Auditor, the Commission shall forfeit the unclaimed allotment or allotments and the funds shall return to the District's General Fund.

(4) This subsection shall take effect beginning in fiscal year 1999.

(k) Commissions may pool Commission funds in accordance with agreements adopted by their constituent Commissions.

(l) A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office, including staff salaries and nominal refreshments at Commission meetings. A Commission may expend its funds for public purposes outside of the Commission area as authorized pursuant to subsection (k) of this section. Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section. Funds allocated to the Commissions may not be used for a purpose that involves partisan political activity, personal subsistence expenses, Commissioner compensation, meals, legal expenses other than for Commission representation before an agency, board, or commission of the District government, or travel outside of the Washington metropolitan area. Funds may be used to pay the local transportation expenses of a Commissioner if the Commissioner is officially representing the Commission or a committee of the Commission at public hearings or meetings or is engaged in official Commission business.

(m) A grant approved by a Commission shall provide a benefit that is public in nature and that benefits persons who reside or work within the Commission

area. A grant to an individual shall be prohibited as a non-public purpose expenditure. A Commission shall adopt guidelines for the consideration and award of grants that shall include a provision that requires the proposed grantee to present the request for a grant at a public meeting of the Commission. A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting. The award of a grant by a Commission shall not be conditioned on support for a position taken by the Commission.

(n) The Mayor may, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(o) A Commission may employ any person necessary to provide administrative support to the Commission. A Commission shall establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees. A Commission employee shall serve at the pleasure of the Commission. An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of subchapters XXII and XXIII of Chapter 6 of this title.

(p) Any Commissioner within an individual Commission shall have equal access to the Commission office in order to carry out Commission duties and responsibilities.

(q) Upon the request of a Commission, evidenced by a properly adopted resolution signed or transmitted by the Chairman and Secretary, the Mayor shall provide that Commission with suitable office space in a District-owned building. The space shall be a minimum of 250 square feet and shall be the sole office of the Commission. The space shall be located within the Commission's boundaries. If no such space is available then the space shall be located within the ward boundaries of the Commission. Furnishings, equipment, telephone service, and supplies for the office space shall be provided from the Commission's funds. There shall be a written lease between the Mayor or District agency and the Commission, which shall specify what operating costs, such as utilities, janitorial services, and security, shall be paid by the Commission. (1973 Ed., § 1-711; Oct. 10, 1975, D.C. Law 1-21, § 16, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5465; Oct. 26, 1977, D.C. Law 2-30, § 2(c), 24 DCR 3723; Mar. 6, 1991, D.C. Law 8-203, § 3(f), 37 DCR 8420; Mar. 16, 1993, D.C. Law 9-190, § 2, 39 DCR 9003; Feb. 5, 1994, D.C. Law 10-68, § 3(b), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-198, § 401, 43 DCR 4569; July 24, 1998, D.C. Law 12-140, § 2, 45 DCR 2978; Mar. 26, 1999, D.C. Law 12-175, § 1702, 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-261 and 1-262.

Effect of amendments. — D.C. Law 11-198 rewrote (d).

D.C. Law 12-140 rewrote (j).

D.C. Law 12-175 rewrote (e).

Temporary amendment of section. — Section 401 of D.C. Law 11-226 rewrote (d).

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amend-

ment Act of 1996, whichever occurs first.

Section 2 of D.C. Law 12-276 amended (c) and (j) to read as follows:

"(c) The treasurer of each Commission shall file with the Office of the District of Columbia Auditor, within 30 days of assuming the office of treasurer or within 30 days of any change in the requested information, on a form provided by the Auditor, a statement that includes the treasurer's name, home and business address and telephone number, the location of the books and records of the Commission and the name and location of any depository of the Commission's funds, including account numbers. The treasurer and Chairman of each Commission shall file with the District of Columbia Auditor, and maintain in force during the their occupancy of their respective offices, a cash or surety bond in an amount and on a form satisfactory to the Auditor. Participation by a Commission in the Advisory Neighborhood Commission Security Fund established by § 1-264.1 shall satisfy the requirement of a cash or surety bond. The bylaws adopted by each Commission shall include a provision for filling in a timely manner a vacancy in the office of treasurer from among the remaining Commissioners. No expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the District of Columbia Auditor."

"(j)(1) The treasurer of the Commission shall prepare a quarterly financial report on a form provided by the Auditor. The financial report shall be presented to the Commission for its consideration at a public meeting of the Commission within 45 days of the end of the quarter. A copy of the approved financial report, signed by the Chairman, the secretary, and the treasurer, shall be filed, with a record of the vote adopting the report, with the Auditor within 7 days of approval. Each quarterly financial report must include copies of canceled checks, bank statements, invoices and receipts, grant request letters, executed contracts, and the minutes indicating the Commission's approval of disbursements reported in the quarterly report. The Commission shall make available for on-site review to the Auditor, upon the Auditor's request, originals of documents required to be submitted with quarterly financial reports pursuant to this section. A financial report shall be available for public inspection during the Commission's normal office hours."

"(2) No quarterly allotment shall be forwarded to a Commission until all reports of financial activity for the quarters preceding the immediate previous quarter are approved by the Auditor. If a Commission fails to file 2 consecutive quarterly reports that meet the requirements of paragraph (1) of this subsec-

tion, it shall relinquish its checkbook to the Auditor, whose permission will be needed for any expenditure made by check until the Commission files the required financial reports. No branch or office of a bank or financial institution located in the District of Columbia shall honor any check or bank withdrawal by a Commission after it receives notice from the Auditor that a Commission has failed to relinquish its checkbook in accordance with this paragraph."

"(3) On January 22, 1999, the Chief Financial Officer shall reallocate any quarterly allotments that are held in reserve for Commissions for any period through the end of fiscal year 1997. The funds shall be used to provide fiscal year 1999 allotments to each Commission, consistent with § 1-252. On September 30, 1999, and on the last day of each subsequent fiscal year, any additional funds held in reserve for Commissions by the Chief Financial Officer, due to the failure of a Commission to file a quarterly financial report on a timely basis, shall be returned to the District's General Fund."

Section 5(b) of D.C. Law 12-276 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 401 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provided for the application of the act.

For temporary amendment of section, see § 1302 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

For temporary amendment of section, see § 2 of the Advisory Neighborhood Commissions Management Control and Funding Emergency Amendment Act of 1998 (D.C. Act 12-619, January 22, 1999, 46 DCR 1339).

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-58. — See note to § 1-261.

Legislative history of Law 2-30. — See note to § 1-261.

Legislative history of Law 8-203. — See note to § 1-264.1.

Legislative history of Law 9-190. — Law 9-190, the "Advisory Neighborhood Commission Office Space Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-274, which was referred to the Committee on

Government Operations. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-311 and transmitted to both Houses of Congress for its review. D.C. Law 9-190 became effective on March 16, 1993.

Legislative history of Law 10-68. — See note to § 1-256.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the “Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Legislative history of Law 12-140. — Law 12-140, the “Advisory Neighborhood Commissions Act of 1975 Financial Reporting Amend-

ment Act of 1998,” was introduced in Council and assigned Bill No. 12-262, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 22, 1998, it was assigned Act No. 12-342 and transmitted to both Houses of Congress for the review. D.C. Law 12-140 became effective on July 24, 1998.

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-276. — Law 12-276, the “Advisory Neighborhood Commissions Management Control and Funding Temporary Amendment Act of 1999,” was introduced in Council and assigned Bill No. 12-901. The Bill was adopted on first and second readings on December 15, 1998, and January 5, 1999, respectively. Signed by the Mayor on January 22, 1999, it was assigned Act No. 12-628 and transmitted to both Houses of Congress for its review. D.C. Law 12-276 became effective on April 27, 1999.

§ 1-264.1. Advisory Neighborhood Commission Security Fund.

(a) There is established, for the purpose of insuring Advisory Neighborhood Commissions against unauthorized expenditures or loss of funds, an Advisory Neighborhood Commission Security Fund (“Fund”) to be held in the custody of a Board of Trustees (“Trustees”) composed of the Secretary of the District of Columbia, the General Counsel to the Council of the District of Columbia, and the District of Columbia Auditor. The Trustees shall have exclusive authority and discretion in its fiduciary capacity to manage and control the Fund. The Fund shall not be held liable for any loss as the result of an expenditure authorized by a vote of a Commission.

(b) Each Advisory Neighborhood Commission may become a participant of the Fund upon payment to the Fund of an annual contribution at the beginning of the fiscal year in an amount to be determined by the Trustees. An Advisory Neighborhood Commission shall be eligible to participate in the Fund if the treasurer of the Commission agrees, on a form to be provided by the Trustees, to be personally liable to the Fund for any sum paid out by the Fund as a result of the treasurer’s wrongful misappropriation or loss of Commission monies.

(c) If, in any fiscal year, the Trustees determine that there are sufficient assets in the Fund to cover reasonably expected losses, the Trustees may waive

or delay monetary contributions for any Commission that made a contribution in the most recent fiscal year for which the Fund required a contribution.

(d) If a participating Commission suffers a monetary loss that may be reimbursed by the Fund, the Commission may request reimbursement upon a written application form provided by the Trustees. The application form shall be signed by a majority of the members of the participating Commission on a form provided by the Trustees. The Trustees shall consider the request at a public meeting held in accordance with § 1-1504. Notice of the meeting shall be published in the District of Columbia Register no later than 30 days prior to the meeting and shall be sent by registered mail to the Chairman of the Commission and the treasurer of the Commission at the time that the loss was incurred.

(e) Assets of the Fund shall be held in an interest bearing account located in the District of Columbia.

(f) The Fund shall publish an annual financial report in the District of Columbia Register no later than 90 days after the end of each fiscal year. (Oct. 10, 1975, D.C. Law 1-21, § 17, as added Mar. 6, 1991, D.C. Law 8-203, § 3(g), 37 DCR 8420; Feb. 5, 1994, D.C. Law 10-68, § 3(c), 40 DCR 6311.)

Section references. — This section is referred to in § 1-264.

Temporary amendment of section. — Section 3 of D.C. Law 12-276 amended (b) to read as follows:

“(b) Each Advisory Neighborhood Commission may become a participant of the Fund upon payment to the Fund of an annual contribution at the beginning of the fiscal year in an amount to be determined by the Trustees. A Commission shall be eligible to participate in the Fund if the treasurer and the Chairman of the Commission agree, on a form to be provided by the Trustees, to be personally liable to the Fund for any sum paid out by the Fund as a result of the treasurer or Chairman’s wrongful misappropriation or loss of Commission monies.”

Section 5(b) of D.C. Law 12-276 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Advisory Neighborhood Commissions Management Control and Funding Emergency Amendment Act of 1998 (D.C. Act 12-619, January 22, 1999, 46 DCR 1339).

Legislative history of Law 8-203. — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — See note to § 1-256.

Legislative history of Law 12-276. — See note to § 1-264.

§ 1-265. Definitions.

For the purposes of this act:

(1) The term “Board” means the District of Columbia Board of Elections and Ethics.

(2) The term “Commission area” includes only those Advisory Neighborhood Commission areas in which there was not established an Advisory Neighborhood Commission according to the provisions of the Advisory Neighborhood Commissions Act of 1975, more particularly described as: 1B, 4C, 4D, 6C, 8A and 8D. (1973 Ed., § 1-171m; June 19, 1976, D.C. Law 1-72, § 2, 23 DCR 574.)

Legislative history of Law 1-72. — Law 1-72 was introduced in Council and assigned Bill No. 1-233, which was referred to the Advisory Committee. The Bill was adopted on first and second readings on March 9, 1976 and March 23, 1976, respectively. Signed by the Mayor on April 26, 1976, it was assigned Act No. 1-108 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to in this section, is the Supplementary Neighborhood Commissions Act, D.C. Law 1-72.

The Advisory Neighborhood Commissions Act of 1975, referred to in paragraph (2) of this section, is the Act of October 10, 1975, D.C. Law 1-21.

§ 1-266. Subsequently established Advisory Neighborhood Commissions — Petition required; established by resolution.

(a) As soon as possible after June 19, 1976, but in no case more than 5 days after such date, the Board shall:

(1) Make available to any resident of a Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) Publish in the District of Columbia Register, and post in conspicuous places in each Commission area, the number of registered qualified electors in such Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of a Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish, by resolution, a nonpartisan elected Advisory Neighborhood Commission for such Commission area, with its members to be elected from the single-member districts established for such Commission area. Nothing in this section shall be construed to permit an individual to sign more than 1 petition for the establishment of an Advisory Neighborhood Commission. (1973 Ed., § 1-171n; June 19, 1976, D.C. Law 1-72, § 3, 23 DCR 575.)

Legislative history of Law 1-72. — See note to § 1-265.

§ 1-267. Same — Nomination by petition; qualifications of members.

Members of the Advisory Neighborhood Commissions which are established pursuant to the provisions of this act shall:

(1) Be nominated in the manner prescribed in § 1-256(b); and

(2) Have those qualifications specified in § 1-256(a). (1973 Ed., § 1-171o; June 19, 1976, D.C. Law 1-72, § 4, 23 DCR 576.)

Legislative history of Law 1-72. — See note to § 1-265.

References in text. — “This act,” referred to in this section, is the Supplementary Neighborhood Commissions Act, D.C. Law 1-72.

References in text. — “This act,” referred to

§ 1-268. Same — Election of members; term of office; vacancies; change in residency.

(a) Following the initial elections of members of Advisory Neighborhood Commissions in November 1976, subsequent elections of such members occurred in November of odd-numbered calendar years through 1981. Beginning in 1984, general elections of members of Advisory Neighborhood Commissions shall take place on the 1st Tuesday after the 1st Monday in November of each even-numbered calendar year.

(b)(1) Each member of an Advisory Neighborhood Commission shall serve for a term of 2 years which shall begin at noon on the 2nd day of January next following the date of election of such member, or at noon on the day after the date the Board certifies the election of such member, whichever is later.

(2) Repealed.

(3) Each member of an Advisory Neighborhood Commission holding office on August 2, 1983, shall continue in office until noon on the 2nd day of January next following the date of the election provided for in paragraph (2) of this subsection.

(c) The provisions of subsections (c), (d), and (e) of § 1-257 shall apply to members elected to such Advisory Neighborhood Commissions. (1973 Ed., § 1-171p; June 19, 1976, D.C. Law 1-72, § 5, 23 DCR 576; Aug. 2, 1983, D.C. Law 5-17, § 3, 30 DCR 3196; Sept. 26, 1984, D.C. Law 5-116, § 2, 31 DCR 4018.)

Cross references. — As to general election for members of Board of Education, see § 1-1314.

Legislative history of Law 1-72. — See note to § 1-265.

Legislative history of Law 5-17. — See note to § 1-257.

Legislative history of Law 5-116. — See note to § 1-251.

References in text. — “Paragraph (2) of this subsection”, which established the term of

members elected in 1984, referred to in (b)(3), was repealed by D.C. Law 5-116, § 3(b), effective September 26, 1984.

Section 1-257(c), referred to in subsection (c), was repealed by D.C. Law 4-14, § 2(b), effective June 23, 1981.

Cited in *White v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 537 A.2d 1133 (1988).

§ 1-269. Same — Law applicable.

Except to the extent specifically provided in this act, those provisions of the Advisory Neighborhood Commissions Act of 1975, including the amendments made by that Act, and all other provisions of law relating to Advisory Neighborhood Commissions, shall apply to the Advisory Neighborhood Commissions established pursuant to the provisions of this act. (1973 Ed., § 1-171q; June 19, 1976, D.C. Law 1-72, § 6, 23 DCR 577.)

Legislative history of Law 1-72. — See note to § 1-265.

References in text. — “This act,” referred to in this section, is the Supplementary Neighborhood Commissions Act, D.C. Law 1-72.

The Advisory Neighborhood Commissions Act of 1975, referred to in this section, is the Act of October 10, 1975, D.C. Law 1-21.

§ 1-270. Regulations.

The Board is authorized to adopt, amend, repeal, and enforce such regulations as are necessary to carry out the provisions of this act, and is further directed to take such steps as are necessary to ensure that the election provided for under this act is held in an efficient manner. (1973 Ed., § 1-171r; June 19, 1976, D.C. Law 1-72, § 8, 23 DCR 578.)

Legislative history of Law 1-72. — See note to § 1-265.

References in text. — “This act,” referred to in this section, is the Supplementary Neighborhood Commissions Act, D.C. Law 1-72.

Cited in *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

Subchapter VI. Initiative and Referendum.

§ 1-281. Definitions.

(a) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(b) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection. (1973 Ed., § 1-181; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative history of Law 2-46. — Law 2-46 was introduced in Council and assigned Bill No. 2-2, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first, and second readings on April 5, 1977, May 3, 1977 and May 17, 1977, respectively. Signed by the Mayor on June 14, 1977, it was assigned Act No. 2-46 and transmitted to both Houses of Congress for its review. Concurrent Resolutions 471 and 464 were approved by both Houses of Congress as required by the act.

D.C. Law Review. — For article, “The District of Columbia’s response to homelessness: Depending on the kindness of strangers,” see 2 D.C. L. Rev. 47 (1993).

Adoption not violation of Charter. — Adoption of the initiative right by Council, Mayor, and the electorate did not violate the District’s Charter. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Defect in legislation adopting initiative did not change council’s intent. — Although there was a defect in the language of the initiative measure (use of the words “in five or

more of the City’s wards” instead of “in each of five or more of the City’s wards”), which was later corrected by amendment to the provision, the legislation approved by Council and signed by the Mayor were not different in intent. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 683 A.2d 1371 (1996).

Initiative right conferred by Charter amendments includes right to repeal and amend existing legislation; this section gives the electorate the right to propose “laws,” and the word “laws” includes both new legislation and the amendment and repeal of existing legislation. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff’d* on rehearing, App. D.C., 441 A.2d 889 (1981).

Amendment of acts approved by referendum or adopted by initiative. — The plain effect of the language of § 1-285 is to equate acts approved by referendum or adopted by initiative with any other act of the Council. Nothing in the statute reflects an intent to elevate initiatives, insofar as amendment is concerned, to the plane of the charter itself by requiring approval of the electorate before ei-

ther can be amended. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Repeal of existing legislation. — The plenary legislative power given the Council includes the authority to repeal existing legislation, whether or not derived from an initiative. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Power of initiative cannot extend to purely executive or administrative matters. — The power of the initiative, being essentially coextensive with the power of the legislative branch of government to make legislative and policy decisions, cannot extend to matters purely executive or administrative in nature without violating the separation of powers established by Congress. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

An initiative on executive action would seriously encumber, if not paralyze, the execution of a previously-approved policy or program, without ever actually addressing the merits of the program itself. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 871 (1980), *aff'd* on rehearing, App. D.C., 441 A.2d 889 (1981).

Initiative right does not extend to allocation of District revenues. — The right of initiative does not extend to initiatives which allocate District government revenues. *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

Matters relating to the local budget process which Congress delegated to the District government in the Self-Government Act remain with the elected officials of the District government and are not subject to control by the electorate through an initiative or the right of referendum. *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

“Laws appropriating funds” exception. — The “laws appropriating funds” exception to the citizens’ right to make laws through the initiative process does not prohibit enactment of the District of Columbia Right to Overnight Shelter Initiative of 1984. *District of Columbia Bd. of Elections & Ethics v. District of Columbia*, App. D.C., 520 A.2d 671 (1986).

Initiatives affecting or relating to budget process. — Where an initiative would

affect or “relate to” the budget process in a broad manner, it constitutes a law appropriating funds prohibited by subsection (a) of this section. *Dorsey v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 648 A.2d 675 (1994).

Neither the fact that the Overnight Shelter Initiative of 1984 (Chapter 6 of Title 3) may be denominated loosely an entitlement program nor the provisions for judicial review make the initiative a law appropriating funds and therefore prohibited by the laws appropriating funds exception in subsection (a). *District of Columbia Bd. of Elections & Ethics v. District of Columbia*, App. D.C., 520 A.2d 671 (1986).

Required signatures. — The number of registered electors required to qualify an initiative or referendum measure for the ballot shall be determined in accordance with the requirements set forth in the Initiative, Referendum and Recall Charter Amendments Act of 1977 (§§ 1-281 to 1-287 and 1-291 to 1-295). *Price v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 645 A.2d 594 (1994).

Electorate cannot interfere, by way of initiative, with legislature’s established fiscal plans. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Restoration of unemployment benefits cut by 1983 Charter Amendments Act not proper subject of initiative process pursuant to the Initiative Procedures Act since such a restoration would require the appropriation of funds. *District of Columbia Bd. of Elections & Ethics v. Jones*, App. D.C., 481 A.2d 456 (1984).

Provisions regarding “booting” and amnesty for late payment of fines improper subject for initiative. — A proposed ballot initiative that would prohibit the District government from “booting” and thereby impounding motor vehicles as a fine-collection measure and would also require an “amnesty from time-to-time” from increased penalties for late payment of traffic fines is not a proper subject of initiative under governing law. *Dorsey v. District of Columbia Bd. of Elec. & Ethics*, App. D.C., 648 A.2d 675 (1994).

Cited in *Hazel v. United States*, App. D.C., 516 A.2d 944 (1986); *Johnson v. Danneman*, App. D.C., 547 A.2d 981 (1988); *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990); *Davies v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 596 A.2d 992 (1991); *Atkinson v. District of Columbia Bd. of Election & Ethics*, App. D.C., 597 A.2d 863 (1991).

§ 1-282. Process.

(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal in number to 5 percent of

the registered electors in the District of Columbia: Provided, that the total signatures submitted include 5 percent of the registered electors in each of 5 or more of the City's wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued 30 or more days prior to submission of the signatures for the particular initiative or referendum petition.

(b)(1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in §§ 1-227 and 47-304 and the President of the United States or the President of the Senate and the Speaker of the House of Representatives shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

(2) No act is subject to referendum if it has become law according to the provisions of § 1-227. (1973 Ed., § 1-182; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Section references. — This section is referred to in §§ 1-283 and 1-292.

Legislative history of Law 2-46. — See note to § 1-281.

Legislative history of Law 3-1. — Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

Unilateral revision of initiative bill not authorized. — Neither the Charter Amendments nor the Initiative Procedures Act expressly authorizes the proposers of an initiative, the Board, or the courts to unilaterally revise the substance of an initiative bill after circulation of petitions to the voters. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

In most circumstances neither the proposer, the Board, nor a court can surmise with any confidence or accuracy that petition-signers would have approved a version of the initiative

different from the one summarized on the petitions. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Act prevented from taking effect. — The only circumstances that can prevent an act from becoming law are the passage of a joint resolution by Congress under § 1-233(c)(1) or the filing of a valid referendum petition under subsection (b)(1) of this section. *Bliley v. Kelly*, 793 F. Supp. 353 (D.D.C. 1992), *aff'd*, 23 F.3d 507 (D.C. Cir. 1994).

Required signatures. — The provisions of § 1-1320(i) regarding the number of signatures required on an initiative or referendum measure are violative of the Initiative, Referendum and Recall Charter Amendments Act of 1977 (§§ 1-281 to 1-287 and §§ 1-291 to 1-295) to the extent that they are inconsistent with subsection (a) of this section and cannot stand. *Price v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 645 A.2d 594 (1994).

Cited in *McClough v. United States*, App. D.C., 520 A.2d 285 (1987); *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987); *Atkinson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 597 A.2d 863 (1991).

§ 1-283. Submission of measure at election.

The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special, or primary

election held at least 90 days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within 114 days of its receipt of a petition as provided in § 1-282. If a previously scheduled general, primary, or special election will occur between 54 and 114 days of its receipt of a petition as provided in § 1-282, the District of Columbia Board of Elections and Ethics may present the referendum at that election. (1973 Ed., § 1-183; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative history of Law 2-46. — See note to § 1-281.

Unilateral revision of initiative bill not authorized. — Neither the Charter Amendments nor the Initiative Procedures Act expressly authorizes the proposers of an initiative, the Board, or the courts to unilaterally revise the substance of an initiative bill after circulation of petitions to the voters. *Convention Ctr. Referendum Comm. v. District of Co-*

lumbia Bd. of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

In most circumstances neither the proposer, the Board, nor a court can surmise with any confidence or accuracy that petition-signers would have approved a version of the initiative different from the one summarized on the petitions. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

§ 1-284. Rejection of measure.

If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the 365 days following the date of the District of Columbia Board of Elections and Ethics' certification of the vote concerning the referendum. (1973 Ed., § 1-184; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative history of Law 2-46. — See note to § 1-281.

Rejection of Initiative on Mandatory Life Imprisonment or Death Penalty for Murder in the District of Columbia. — Section 138 of Pub. L. 102-382, 106 Stat. 1436, the District of Columbia Appropriations Act, 1993, provided an initiative measure which would have increased the penalty for first-

degree murder in the District of Columbia to a sentence of death or life imprisonment without the possibility of parole; the initiative was rejected at the general election held on November 3, 1992.

Cited in *Atkinson v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 597 A.2d 863 (1991).

§ 1-285. Approval of measure.

If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of § 1-233(c). (1973 Ed., § 1-185; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Legislative history of Law 2-46. — See note to § 1-281.

Initiative power is power of direct legislation by the electorate. *Convention Ctr. Referendum Comm. v. District of Columbia Bd.*

of Elections & Ethics, App. D.C., 441 A.2d 889 (1981).

Determination whether action is legislative and hence subject to initiative depends substantially on both the particular govern-

mental structure and the initiative measure under consideration. *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981).

Amendment of acts approved by referendum or adopted by initiative. — The plain effect of the language of § 1-285 is to equate acts approved by referendum or adopted by initiative with any other act of the council.

Nothing in the statute reflects an intent to elevate initiatives, insofar as amendment is concerned, to the plane of the charter itself by requiring approval of the electorate before either can be amended. *Atchison v. District of Columbia*, App. D.C., 585 A.2d 150 (1991).

Cited in *McClough v. United States*, App. D.C., 520 A.2d 285 (1987); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

§ 1-286. Short title and summary.

The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than 30 days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure. (1973 Ed., § 1-186; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Legislative history of Law 2-46. — See note to § 1-281.

Cited in *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections*

& Ethics, App. D.C., 441 A.2d 889 (1981); *Johnson v. Danneman*, App. D.C., 547 A.2d 981 (1988).

§ 1-287. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within 180 days of the effective date of this subchapter. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (1973 Ed., § 1-187; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Legislative history of Law 2-46. — See note to § 1-281.

Charter amendments were not intended to be self-executing. *Convention Ctr. Referendum Comm. v. Board of Elections & Ethics*, App. D.C., 399 A.2d 550 (1979).

Cited in *Convention Ctr. Referendum Comm. v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 441 A.2d 889 (1981); *Hessey v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 601 A.2d 3 (1991).

Subchapter VII. Recall of Elected Public Officials.

§ 1-291. "Recall" defined.

The term "recall" means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress

for the District of Columbia) prior to the expiration of his or her term. (1973 Ed., § 1-191; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Section references. — This section is referred to in § 1-1321.

Legislative history of Law 2-46. — See note to § 1-281.

Cited in Price v. District of Columbia Bd. of

Elections & Ethics, App. D.C., 645 A.2d 594 (1994); Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth., 964 F. Supp. 416 (D.D.C. 1997).

§ 1-292. Process.

Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by 10 percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The 10 percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued 30 or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the 10 percent shall include 10 percent of the registered electors in each of 5 or more of the City's wards. The District of Columbia Board of Elections and Ethics shall hold an election within 114 days of its receipt of a petition as provided in § 1-282. If a previously scheduled general, primary, or special election will occur between 54 and 114 days of its receipt of a petition as provided in § 1-282, then the District of Columbia Board of Elections and Ethics may present the recall question at that election. (1973 Ed., § 1-192; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Legislative history of Law 2-46. — See note to § 1-281.

Legislative history of Law 3-1. — See note to § 1-282.

Cited in Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth., 964 F. Supp. 416 (D.D.C. 1997).

§ 1-293. Time limits on initiation of process.

The process of recalling an elected official may not be initiated within the first 365 days nor the last 365 days of his or her term of office. Nor may the process be initiated within 1 year after a recall election has been determined in his or her favor. (1973 Ed., § 1-193; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative history of Law 2-46. — See note to § 1-281.

§ 1-294. When official removed; filling of vacancies.

An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in the same manner as other vacancies as provided in §§ 1-221(d) and 1-241(c)(2) and § 1-1314(a). (1973 Ed., § 1-194; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative history of Law 2-46. — See note to § 1-281.

§ 1-295. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within 180 days of the effective date of this subchapter. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (1973 Ed., § 1-195; Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Section references. — This section is referred to in § 1-1321.

Legislative history of Law 2-46. — See note to § 1-281.

Subchapter VIII. Government Reorganization Procedures.

Charter provisions. — Authorization for this subchapter is found in § 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198, which is codified as § 1-242(12).

§ 1-299.1. Purposes.

The Council of the District of Columbia ("Council") declares that it is the policy of the District of Columbia government ("District government") to:

(1) Promote better execution of laws, more effective management of the District government and of its agencies and functions, and promote the expeditious administration of public business;

(2) Reduce expenditures, promote economy, and increase efficiency to the fullest extent practicable with respect to the District government operations; and

(3) Eliminate overlapping and duplication of effort by means of grouping, consolidating, or coordinating agencies and functions to the fullest extent consistent with the efficient operation of the District government. (Oct. 17, 1981, D.C. Law 4-42, § 2, 28 DCR 3425.)

Section references. — This section is referred to in §§ 1-299.3, 1-633.7, and 43-1677.

Legislative history of Law 4-42. — Law 4-42, the "Governmental Reorganization Procedures Act of 1981," was introduced in Council and assigned Bill No. 4-197, which was referred to the Committee on Government Operations.

The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

§ 1-299.2. Definitions.

For the purposes of this subchapter the term:

(1) “Agency” means any office, department, division, board, commission, or other agency of the District government, required by law or by the Mayor or Council to administer any law or any rule adopted under the authority of a law. The term “agency” does not include: The Superior Court of the District of Columbia, the District of Columbia Court of Appeals, those agencies identified in §§ 1-1303, 2-302, 5-412, 31-101 and 43-401, or the Executive Office of the Mayor as defined in this subchapter.

(2) “Reorganization” is the process described in § 1-299.3.

(3) “Executive Office of the Mayor” means those offices or agencies expressly established to provide managerial, budgetary, personnel, secretarial, planning, informational, and special assistance to the Mayor in carrying out the Mayor’s administrative functions in the management of the District government. The term “Executive Office of the Mayor” does not include the Office of Personnel established by § 1-604.2.

(4) “Rule” means the whole or any part of any Mayor’s, Council’s, or agency’s statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or to describe the organization, procedure, or practice requirement of the Mayor, Council, or of any agency.

(5) “Boards and commissions” means bodies established by law or by order of the Mayor consisting of appointed members to perform a trust or execute official functions on behalf of the District government. (Oct. 17, 1981, D.C. Law 4-42, § 3, 28 DCR 3425; Feb. 5, 1994, D.C. Law 10-68, § 4(a), 40 DCR 6311.)

Section references. — This section is referred to in § 43-1677.

Legislative history of Law 10-68. — See note to § 1-256.

Legislative history of Law 4-42. — See note to § 1-299.1.

§ 1-299.3. Process of reorganization defined.

For the purposes of carrying out the objectives of § 1-299.1, the process of reorganization means that action which results in the transfer, consolidation, abolition, or authorization with respect to functions and hierarchy, between or among agencies, and which affects the structure or structures thereof, at the control or responsibility center level(s), including, but not limited to:

(1) The transfer of the whole or part of an agency, or the whole or part of the functions thereof, to the jurisdiction and control of another agency;

(2) The consolidation of the whole or part of an agency, or the whole or part of the functions thereof, with the whole or part of another agency or the functions thereof;

(3) The abolition of the whole or part of an agency wherein such agency or part thereof does not have or will not have any functions; or

(4) The authorization of an officer or agency head to delegate functions vested in specific officers or agency heads not presently authorized to be

delegated, except as provided in § 1-242(6). (Oct. 17, 1981, D.C. Law 4-42, § 4, 28 DCR 3425.)

Section references. — This section is referred to in §§ 1-299.2, 1-299.4, and 43-1677.

Legislative history of Law 4-42. — See note to § 1-299.1.

§ 1-299.4. Preparation, transmittal, publication, and effective date of reorganization plan.

(a) When, after investigation, the Mayor finds that it is necessary to accomplish 1 or more purposes of § 1-299.3, he or she shall prepare a detailed reorganization plan consistent with such findings, which are included in the plan, and shall transmit the plan bearing an identification number to the Council.

(b) Upon transmittal of the proposed reorganization plan, the Mayor shall cause the same to be published in the District of Columbia Register.

(c) The reorganization plan shall become effective on the 61st day following receipt by the Council, excluding Saturdays, Sundays, and holidays: Provided, that the Council does not adopt, within such 60 days, a resolution disapproving such reorganization plan.

(d) Unless the Council has adopted a disapproval resolution by the time of the request, the Mayor may, by written request transmitted to the Chairman of the Council, withdraw a reorganization plan prior to the expiration of the 60-day review period. (Oct. 17, 1981, D.C. Law 4-42, § 5, 28 DCR 3425; Aug. 2, 1983, D.C. Law 5-24, § 10, 30 DCR 3341; Mar. 16, 1989, D.C. Law 7-201, § 4(a), 36 DCR 248.)

Cross references. — As to abolishment of Office of Economic Development and transfer of its authorities, responsibilities, and functions to the Board of Directors of the National Capital Revitalization Corporation, see § 1-2295.29(d)(1).

Section references. — This section is referred to in §§ 1-299.5 and 43-1677.

Legislative history of Law 4-42. — See note to § 1-299.1.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-201. — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

Reorganization Plan #2 of 1993 for the Office of the Assistant City Administrator for Human Resources Development Approval Resolution of 1993. — Pursuant to Resolution 10-123, effective August 6, 1993, the Council approved Reorganization Plan #2 of 1993 for the Office of the Assistant City Administrator for Human Resources Development.

Reorganization Plan No. 6 of 1993 Transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections Disapproval Resolution of 1993. — Pursuant to Resolution 10-211, effective December 17, 1993, the Council disapproved Reorganization Plan No. 6 of 1993 transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections.

Implementation of Reorganization Plan No. 2 of 1992, Establishment of the District of Columbia Office of Tourism and Promotions. — See Mayor's Order 93-81, June 21, 1993.

Reorganization Plan No. 4 of 1996. — Pursuant to Reorganization Plan No. 4 of 1996, each of the functions assigned, and authorities delegated to the Director of the Department of

Human Services as set forth in Sections III.(K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987; and

The administrative and management support functions in the Department of Human Services as set forth in Sections III.(A), (B), (C), (D), (E), and (F), of Reorganization Plan No. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V.(A)(I) above were transferred to the Department of Health.

Reorganization Plan No. 5 of 1996. — Pursuant to Reorganization Plan No. 5 of 1996, the function of providing mental health services to inmates in Department of Corrections facilities provided by the Bureau of Correctional Services, Commission on Mental Health Services, were transferred to the Department of Corrections.

International Business Program abolished. — Pursuant to Reorganization Plan No. 7 of 1996, effective December 13, 1996, the International Business Program in the Office of

Economic Development was abolished and its functions transferred to the Office of International Affairs which was created as an independent subordinate agency within the Executive Office of the Mayor. Additionally, Reorganization Plan No. 7 of 1996 transferred to the Office of International Affairs, 2 International Business Program positions, associated property, records and unexpended balances of appropriations, and other funds, if any, that related to the positions and functions assigned to the Office of International Affairs.

Transfer of powers, duties, and responsibilities from Office of Economic Development. — Section 30(d) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities of the Office of Economic Development to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Office of Economic Development.

§ 1-299.5. Contents and format of reorganization plan.

(a) A reorganization plan transmitted by the Mayor pursuant to § 1-299.4 shall:

(1) In such cases as the Mayor deems necessary, change the name of an agency or part of an agency affected by reorganization and the title of its head, designate the name of the agency resulting from the reorganization, and the title of its head;

(2) Provide for the transfer or other disposition of the records, property, and personnel affected by the reorganization;

(3) Provide for the transfer of such unexpended balances of appropriations and other funds available for use in connection with a function or agency affected by a reorganization as the Mayor deems necessary by reason of such reorganization for use by the agency which shall be responsible for the function after the reorganization plan becomes effective: Provided, however, that all such unexpended balances so transferred may be used only for the purposes for which the appropriation was originally made;

(4) Provide for the termination of the affairs of an agency abolished as a result of the reorganization;

(5) Provide a timetable for the implementation of the reorganization;

(6) Provide for reporting and evaluation systems that will allow for the results of the plan to be measured; and

(7) Be in the following format:

(A) Mayor's statement;

(B) Reorganization plan;

(C) Section-by-section analysis;

(D) Rationale for the reorganization plan:

(i) Problems with the present organization;

(ii) Recent reorganization studies and recommendations, if any; and

(iii) Expected benefits and improvements;

(E) Functional Organization Chart of each affected agency:

- (i) Existing; and
- (ii) Proposed;

(F) Staffing organizational chart indicating grade and source of funding for each position:

- (i) Existing; and
- (ii) Proposed;

(G) Budget data relevant to present and proposed operations of entities to be reorganized:

(i) Impact on financial management system budget structure:

- (I) Control centers; and
- (II) Responsibility centers;

(ii) Impact on budget organization:

(I) Total budget comparisons;
(II) Changes in budget organization (grants and appropriated funds combined); and

(III) Changes detailed by grant and appropriated funds by responsibility center;

(H) Transition planning and employee protection; and

(I) Training needs.

(b) The Mayor shall include, in his or her transmittal message to accompany the plan, the statutory authority for the exercise of the function(s) affected, and an itemization, to the extent practicable, of the reduction of expenditures as a probable result of the reorganization.

(c) A reorganization plan may provide for appointment with the advice and consent of the Council and the salary of the agency head (including an agency resulting from a consolidation or other type of reorganization) if the Mayor finds, and his or her transmittal message declares, that by reason of a reorganization made pursuant to the plan, such provisions are necessary. (Oct. 17, 1981, D.C. Law 4-42, § 6, 28 DCR 3425; Feb. 5, 1994, D.C. Law 10-68, § 4(b), 40 DCR 6311.)

Section references. — This section is referred to in § 43-1677.

Legislative history of Law 4-42. — See note to § 1-299.1.

Legislative history of Law 10-68. — See note to § 1-256.

§ 1-299.6. Transmittal of District of Columbia government organization chart.

The Mayor shall annually submit to the Council, on or before February 1st for a 45-day period of review, a revised chart detailing the organization and structure of the District government that shall reflect any reorganization plans or legislative changes relating to the structure of the District government. If the Council does not approve or disapprove the chart, by resolution, within a 45-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess, the chart shall be deemed approved. (Oct. 17, 1981, D.C. Law 4-42, § 7, 28 DCR 3425; Mar. 16, 1989, D.C. Law 7-201, § 4(b), 36 DCR 248.)

Section references. — This section is referred to in § 43-1677.

Legislative history of Law 4-42. — See note to § 1-299.1.

Legislative history of Law 7-201. — See note to § 1-299.4.

Official organizational structure of District government. — Pursuant to this section, the organizational structure set forth below is the official organizational structure of the District of Columbia government as enacted by D.C. Law 7-139.

Commission on Cooperative Economic Development abolished. — Section 401(k) of D.C. Law 12-86, effective April 29, 1998, provided that the Commission on Cooperative Economic Development, established by Mayor's Order 80-168, issued May 29, 1980 (27 DCR 2596), is abolished.

Community Advisory Board on the Deinstitutionalization of Forest Haven abolished. — Section 401(m) of D.C. Law 12-86, effective April 29, 1998 provided that the community Advisory Board on the

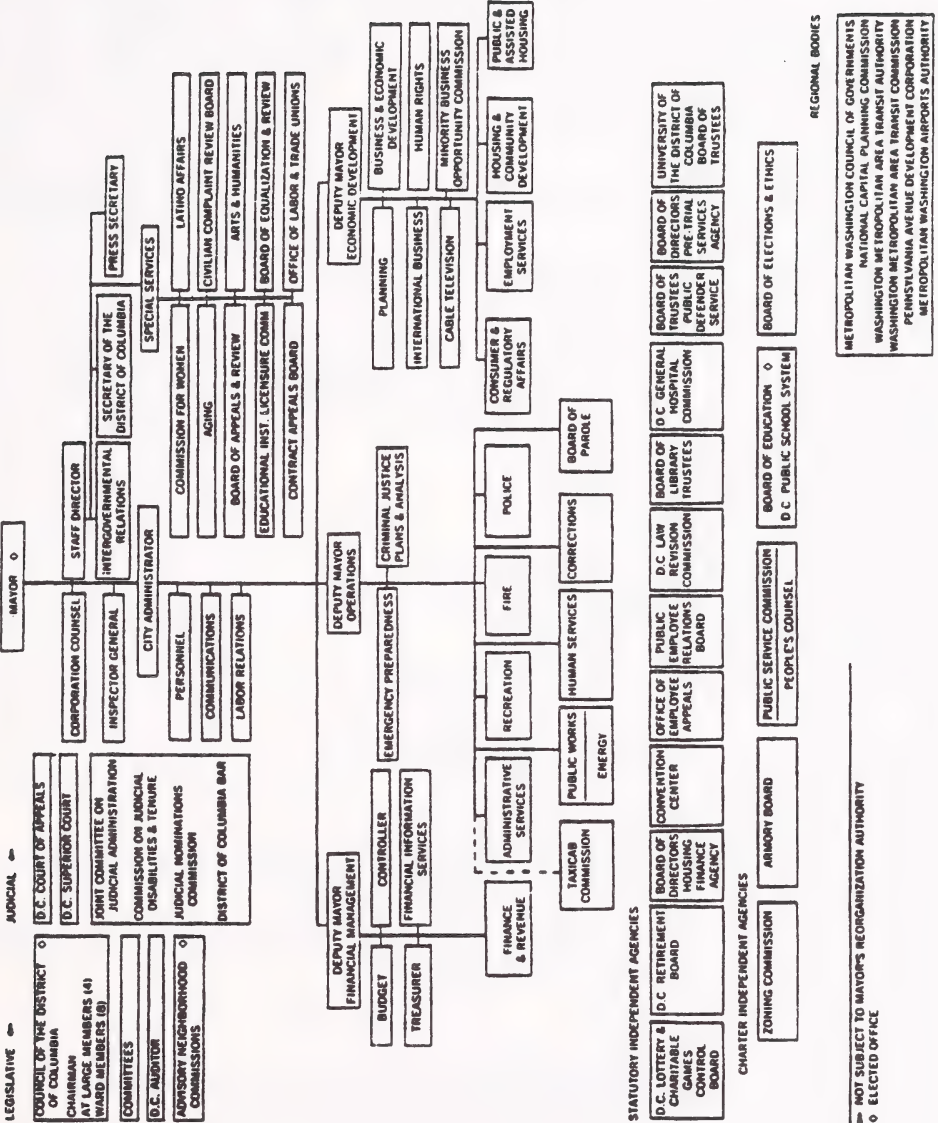
Deinstitutionalization of Forest Haven, established by Mayor's Order 86-177, issued October 1, 1986 (33 DCR 6963), is abolished.

History Records Advisory Board abolished. — Section 401(q) of D.C. Law 12-86, effective April 29, 1998, provided that the Historical Records Advisory Board, established by Mayor's Order 84-35, issued February 10, 1984 (31 DCR 799), is abolished.

Traffic Safety Advisory Committee abolished. — Section 401(cc) of D.C. Law 12-86, effective April 29, 1998, provided that the Traffic Safety Advisory Committee, established by Mayor's Order 84-228, issued December 13, 1984 (32 DCR 226), is abolished.

Mayor's Policy Advisory Committee for Weatherization of Low-Income Homes abolished. — Section 401(ee) of D.C. Law 12-86, effective April 29, 1998, provided that the Mayor's Policy Advisory Committee for Weatherization of Low-Income Homes, established by Mayor's Order 89-12, issued January 6, 1989 (36 DCR 1260), is abolished.

DISTRICT OF COLUMBIA GOVERNMENT



OTHER STATUTORY BOARDS.

Alcoholic Beverage Control Board
Apprenticeship Council
Baseball Commission
Bicentennial Commission
Bicycle Advisory Council
Committee for the Purchase of Products & Services of the Blind & other
Severely Handicapped
Business Incubator Advisory Board
Consumer Claims Arbitration Board
Advisory Committee on Consumer Protection
Economic Development Finance Corp. Board of Directors
Educational Partnership with Technology Corp. Board of Directors
Employee Compensation Appeals Board
Citizens' Energy Advisory Board
Enterprise Zone Study Commission
Gas Station Advisory Board
Hazardous Material Study Commission
Historic Preservation Review Board
Commission on Housing Production
Litter & Solid Waste Reduction Commission
D.C. Committee on Metabolic Disorders
Temporary Motor Vehicle Insurance Commission
Board for the Removal of Notaries Public
Nuclear Weapons Freeze Advisory Board
Occupational Safety & Health Board
Committee on Regulations for the Placement of Children in Family Homes
Temporary Commission on Pay Equity & Training
Police, Fire & Corrections Meritorious Service Awards Selection Committee
Police & Firefighters' Retirement & Relief Board
Redevelopment Land Agency
Rental Housing Commission
D.C. Securities Advisory Committee
Citizen Advisory Committee to the Soil & Water Conservation District
Taxicab Commission
Unemployment Compensation Board
University of the District of Columbia Nominating Committee
Wage-Hour Board
Board of Zoning Adjustment
Nursing Shortage Study Commission
Pretrial Services Agency Executive Committee

LICENSURE BOARDS WITH STATUTORY AUTHORITY.

Board of Accountancy
Board of Examiners & Registrars of Architects
Board of Barber Examiners
D.C. Boxing and Wrestling Commission

Board of Cosmetology
 Board of Dentistry
 Board of Dietetics & Nutrition
 Electrical Board
 Board of Funeral Directors
 Board of Interior Designers
 Board of Medicine
 Advisory Committee on Acupuncture
 Advisory Committee on Chiropractic
 Advisory Committee on Physicians Assistants
 Board of Nursing
 Board of Nursing Home Administrators
 Board of Occupational Therapy
 Board of Optometry
 Board of Pharmacy
 Board of Physical Therapy
 Plumbing Board
 Board of Podiatry
 Board for the Registration of Professional Engineers
 Board of Psychology
 Real Estate Commission
 Refrigeration & Air Conditioning Board
 Board of Social Work
 Steam & Other Operating Engineers Board
 Board of Veterinary Examiners

OTHER BOARDS ESTABLISHED BY EXECUTIVE ORDER.

D.C. State Alcoholism Advisory Council
 Commission on Asian & Pacific Islander Affairs
 D.C. Awards Committee
 Mayor's Block Grant Advisory Committee
 Building Code Advisory Committee
 Mayor's Committee on Child Abuse & Neglect
 Mayor's Coordinating Council on Client Self-Sufficiency
 Commission on Cooperative Economic Development
 Developmental Disabilities Planning Council
 State Advisory Committee for Drug Abuse
 Mayor's Committee on Early Childhood Development
 D.C. Advisory Committee on Education
 Advisory Committee on Emergency Medical Services
 Mayor's Committee on Food, Nutrition & Health
 Community Advisory Board on the Deinstitutionalization of Forest Haven
 Mayor's Committee on Handicapped Individuals
 D.C. Historical Records Advisory Board
 Homeless Coordinating Council
 D.C. Incentive Awards Committee
 Juvenile Justice Advisory Group

Commission on the Martin Luther King, Jr. Holiday
 D.C. State Mental Health Advisory Council
 Mayor's Committee on the Issuance & Use of Police Press Passes
 D.C. Private Industry Council
 Public Housing Advisory Committee
 Advisory Committee on Recreation
 Refugee Resettlement Advisory Committee
 Mayor's Advisory Committee on Resources & Budget
 School & Hospital Facilities Committee
 State Advisory Panel on Special Education
 Statewide Health Coordinating Council
 Traffic Safety Advisory Committee
 Mayor's Policy Advisory Committee for Weatherization of Low-Income Homes

Cited in *Foster v. United States*, App. D.C.,
 615 A.2d 213 (1992).

§ 1-299.7. Report on District boards and commissions.

(a) The Mayor shall, within 60 days of October 17, 1981, transmit to the Council a report on all boards and commissions in existence during the preceding 12-month period by major categories by 1 of the following functions:

- (1) Institutional governance boards;
- (2) Independent regulatory boards;
- (3) Judicial boards;
- (4) Appeals boards;
- (5) Procedural boards;
- (6) Institutional licensure boards;
- (7) Occupational and professional licensure boards;
- (8) State planning boards; or
- (9) Advisory boards.

The report shall include the name, functions, status, composition, date and authority for its creation, the total estimated annual cost to the District government to fund, service, supply, and maintain such board or commission, and the agency responsible for providing the necessary support for the board or commission.

(b) The Mayor shall, within 90 days after October 17, 1981, issue in accordance with subchapter I of Chapter 15 of this title, rules and regulations establishing criteria for evaluating all boards and commissions to determine whether such board or commission should be abolished or merged with any other board or commission, and whether the responsibility of such board or commission performs a necessary function not already being performed.

(c) The Mayor shall, immediately after October 1, 1982, institute a comprehensive review of the activities and responsibilities of each board and commission to determine:

- (1) Whether such board or commission is carrying out its purpose;
- (2) Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

- (3) Whether it should be merged with another board or commission; or
- (4) Whether it should be abolished.

Upon completion of the review, the Mayor shall make recommendations to either the agency head or the Council with respect to action he or she believes should be taken. Thereafter, the Mayor shall carry out a similar review annually, and transmit to the Council no later than February 1st of each year, a report on the activities, status, and composition of all boards and commissions. The report shall contain the name of every board and commission, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, and the total estimated annual cost to the District government to fund, service, supply, and maintain such board or commission. (Oct. 17, 1981, D.C. Law 4-42, § 8, 28 DCR 3425; June 4, 1982, D.C. Law 4-113, § 3, 29 DCR 1695.)

Section references. — This section is referred to in § 43-1677.

Legislative history of Law 4-42. — See note to § 1-299.1.

Legislative history of Law 4-113. — Law 4-113 was introduced in Council and assigned Bill No. 4-407, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respec-

tively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-176 and transmitted to both Houses of Congress for its review.

Establishment of new commissions. — Section 402 of D.C. Law 12-86 provided that, as of the effective date of the act, there shall be no new commission established except as necessary to carry out a legislatively mandated purpose as required by federal or District of Columbia laws.

CHAPTER 3. MAYOR, COUNCIL, AND OTHER OFFICERS.

- | Sec. | Sec. |
|---|--|
| 1-301. Persons prohibited from becoming surety upon bond. | 1-331. Investigations of municipal matters; authority to administer oaths. |
| 1-302. Surety bonds of officers and employees; payment of premiums. | 1-332. [Repealed]. |
| 1-303. Executive Secretary authorized to execute certain documents. | 1-333. Illustrations in annual reports prohibited unless authorized by Mayor. |
| 1-304. Volunteers — Utilization by District government encouraged; exception. | 1-334. Originals of discontinued reports to be preserved for public inspection. |
| 1-305. Same — Promulgation of regulations. | 1-335. Appropriations for printing schedules or lists of supplies and materials. |
| 1-306. Same — Conflicts of interest; ineligibility for employee benefits; liability of District for torts of volunteers. | 1-336. Leasing authority. |
| 1-307. Same — Inapplicability to offices of United States Marshal or United States Attorney for the District of Columbia. | 1-337. Additional powers of Mayor, Council, and Director. |
| 1-308. Same — Definitions. | 1-338. Subpoena power. |
| 1-308.1. Free clinic liability indemnification assistance program — Definitions. | 1-338.1. Administration of oaths. |
| 1-308.2. Same — Establishment. | 1-339. [Repealed]. |
| 1-308.3. Same — Eligibility requirements. | 1-340. Powers and duties of Director of the Department of Licenses, Investigation and Inspections; delegation of authority. |
| 1-308.4. Same — Rules. | 1-341. Inspector of Asphalts and Cements; limitation upon compensation and services. |
| 1-309. Abolition or consolidation of offices; reduction of employees; appointments to and removal from office. | 1-342. Settlement for real estate acquired by purchase or condemnation. |
| 1-310. Taxes not to be anticipated by sale or hypothecation. | 1-343. Power conferred by §§ 1-337 to 1-340 and 1-342 as additional. |
| 1-311. Power to grant pardons and respites; commissioning of officers; execution of laws. | 1-344. Use of exchange allowances or sale proceeds to purchase similar items. |
| 1-312. Hack stands — Location. | 1-345. Authority to grant additional compensation. |
| 1-313, 1-314. [Repealed]. | 1-346. Authority to fix certain licensing and registration fees. |
| 1-315. Regulations authorized in certain cases. | 1-347. Increase or decrease of fees authorized in § 1-346. |
| 1-316. Additional penalties for violation of regulations. | 1-348. Mayor's authority to determine honorariums; deposit of funds in Treasury; receipt of honorarium without prejudice to retirement compensation; "honorarium" defined. |
| 1-317. Regulations for the keeping, leashing, and running at large of dogs. | 1-349. Applicability of §§ 1-348 to 1-353. |
| 1-318. Publication of regulations; effective date. | 1-350. Refund of unearned fees. |
| 1-319. Regulations for protection of life, health, and property. | 1-351. Authority to fix and change licensing periods; proration of fee. |
| 1-320. Expenditures for emergencies. | 1-352. References to boards, commissions, and committees mentioned in §§ 1-348 to 1-353. |
| 1-321. Regulations relative to firearms, explosives, and weapons. | 1-353. Appropriation for administration of sections mentioned in § 1-349. |
| 1-322. Building regulations. | 1-354. Authority for transporting children of certain employees in District-owned vehicles. |
| 1-323. Regulations for construction, repair, and operation of elevators. | 1-355. Reception of eminent persons; appropriation authorized. |
| 1-324. Pleuropneumonia. | 1-356. Expenditures. |
| 1-325. Outdoor signs — Regulations. | 1-357. Imposition of fee for delivery of bad check in payment of obligation due District of Columbia; amount |
| 1-326. Same — License required; fee. | |
| 1-327. Same — Penalties; publication of regulations. | |
| 1-328. Maintenance of lights outside city limits. | |
| 1-329. Cleaning streets, alleys, and avenues; maintenance of sewers. | |
| 1-330. Sale of street sweepings authorized. | |

Sec.		Sec.	
	of fee; manner of collection; exception.	1-360.	Supplementary medical insurance program.
1-358.	District of Columbia student loan insurance program.	1-361.	Duties of Corporation Counsel.
1-359.	District of Columbia medical assistance program.	1-362.	Duties of Assistant Corporation Counsels.
1-359.1.	Insurer obligations.	1-363.	Corporation Counsel and Assistants may administer oaths.
1-359.2.	Employer obligations.	1-364 to 1-366.	[Repealed].
1-359.3.	Recoupment of amounts spent on child medical care.		

§ 1-301. Persons prohibited from becoming surety upon bond.

Neither the Mayor of the District of Columbia, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District. (June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 1-210.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-302. Surety bonds of officers and employees; payment of premiums.

Each officer and employee of the District required to do so by the Council shall provide a bond with such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District. (1973 Ed., § 1-213c; Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 737(c).)

Definitions applicable. — The definitions in § 1-202 apply to this section.

§ 1-303. Executive Secretary authorized to execute certain documents.

It shall be lawful for the Executive Secretary of the District of Columbia, or in his absence or upon his inability to act, such person as said Mayor may designate, when so directed by said Mayor, to execute in the name of the District of Columbia or of said Mayor, by attaching thereto his signature as such Secretary and affixing when requisite the seal of said District, any deed,

contract, pleading, lease, release, regulation, notice, or other paper, which prior to February 11, 1932, said Mayor was required to execute by subscribing thereto his signature: Provided, that prior to such signing, and sealing if requisite, said deed, contract, pleading, lease, release, regulation, notice, or other paper shall first have been considered and approved by said Mayor, and evidence of such consideration and approval shall be reduced to writing and recorded in the minutes of said Mayor, which minutes shall thereafter be signed by said Mayor. (Feb. 11, 1932, 47 Stat. 48, ch. 40; 1973 Ed., § 1-214.)

Cross references. — As to execution by Mayor of deeds to sell real estate, see § 9-403. As to execution of instruments for transfer of Industrial Home School site, see § 32-703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Secretary to Board of Commissioners abolished. — The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Board of

Commissioners by Reorganization Plan No. 5 of 1952. Reorganization Order No. 41 of the Board of Commissioners, dated June 23, 1953, established as part of the Executive Office of the Board of Commissioners under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The Order described the purpose and functions of the Office of Secretary, and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new Office, and that the previously existing Office of the Secretary be abolished. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 2, Commissioner's Order No. 67-23, dated December 13, 1967, as amended, established within the Executive Office of the Commissioner, a Secretariat headed by an Executive Secretary. The Order transferred to the Secretariat certain functions, including the duties, powers and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it existed immediately prior to December 13, 1967, and revoked all other orders inconsistent therewith.

§ 1-304. Volunteers — Utilization by District government encouraged; exception.

It shall be the policy of the District of Columbia government to utilize volunteer citizens in as many governmental programs as is practicable to serve the interests of the community. No volunteer person shall be used to fill any position or perform any service which is currently being performed by an employee of the District of Columbia government. (1973 Ed., § 1-215a; June 28, 1977, D.C. Law 2-12, § 2, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-306 to 1-308, and 1-633.4.

Legislative history of Law 2-12. — Law 2-12 was introduced in Council and assigned

Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively.

Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

§ 1-305. Same — Promulgation of regulations.

The Mayor is directed to promulgate regulations governing the use of volunteers by agencies, departments, commissions, and instrumentalities of the District of Columbia: Provided, that the District of Columbia Board of Education and the Council of the District of Columbia may promulgate regulations governing their respective use of volunteers. (1973 Ed., § 1-215b; June 28, 1977, D.C. Law 2-12, § 3, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-306 to 1-308.

Legislative history of Law 2-12. — See note to § 1-304.

§ 1-306. Same — Conflicts of interest; ineligibility for employee benefits; liability of District for torts of volunteers.

(a) Volunteer citizens may not assist governmental programs until regulations have been properly promulgated under the authority of §§ 1-304 to 1-308. No volunteer may be placed in any position likely to constitute a conflict of interest or the appearance of a conflict of interest in violation of the provisions of Chapter 29 of Title 18, United States Code, or subchapter VI of Chapter 14 of this title.

(b) Persons engaged as volunteers by the District of Columbia government as authorized by this section shall not be eligible for benefits provided to employees of the District of Columbia government under Chapters 81, 83, 85, 87, and 89 of Title 5, United States Code.

(c) All volunteers shall be considered employees of the District of Columbia government for the purposes of §§ 1-1211 to 1-1216.

(d) The District of Columbia shall be liable to third parties for tortious injury caused by volunteers under its supervision and control. (1973 Ed., § 1-215c; June 28, 1977, D.C. Law 2-12, § 4, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-307 and 1-308.

Editor's notes. — In addition to the references to Title 5 of the United States Code found in (b), there is now a Chapter 84, Retirement.

Legislative history of Law 2-12. — See note to § 1-304.

§ 1-307. Same — Inapplicability to offices of United States Marshal or United States Attorney for the District of Columbia.

No provision of §§ 1-304 to 1-308 shall be deemed to apply to volunteers in the Offices of the United States Marshal or the United States Attorney for the District of Columbia. (1973 Ed., § 1-215d; June 28, 1977, D.C. Law 2-12, § 5, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-306 and 1-308.

Legislative history of Law 2-12. — See note to § 1-304.

§ 1-308. Same — Definitions.

For the purposes of §§ 1-304 to 1-308:

(1) The term “employee” means a person who is paid by the District of Columbia government from grant or appropriated funds for his or her services.

(2) The term “volunteer” means a person who donates his or her services to a specific program or department of the District of Columbia government, by his or her free choice and without payment for the services rendered. The reimbursement of the actual expenditures by a volunteer on behalf of the District of Columbia government shall not make that person an employee of the District of Columbia for the purposes of this section.

(3) The term “agencies, departments, commissions, and instrumentalities of the District of Columbia” means all governmental instrumentalities and bodies of the District of Columbia government, except the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. (1973 Ed., § 1-215e; June 28, 1977, D.C. Law 2-12, § 8, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-306 and 1-307.

Legislative history of Law 2-12. — See note to § 1-304.

§ 1-308.1. Free clinic liability indemnification assistance program — Definitions.

For the purposes of §§ 1-308.1 through 1-308.4, the term:

(1) “District” means the District of Columbia.

(2) “Free clinic” means a health clinic or health service that:

(A) Has obtained all licenses, permits, and certificates of occupancy or need that are required as a precondition to lawful operation in the District;

(B) Is certified as a nonprofit organization under 26 U.S.C. § 501(c)(3);

(C) Is certified by the Mayor to meet the requirements of §§ 1-308.1 through 1-308.4 and was operating in the District on January 1, 1986;

(D) Does not require payment for health-care, rehabilitative, or social services except:

(i) As part of a rehabilitation program in which payment by the patient has been determined by the Mayor to be an important component of the patient’s rehabilitation; or

(ii) To cover the costs of laboratory tests or vaccines;

(E) Does not provide intrapartum care, high-risk emergency care, or care requiring the use of anesthesia other than local anesthesia;

(F) Provides health-care, rehabilitative, or social services only under the supervision of a physician, advanced registered nurse, registered nurse, psychologist, or social worker licensed to practice in the District; and

(G) Accepts third-party payments from health insurance providers for their services only where the patient consents in writing to the filing of a claim for benefits to which the patient is eligible.

(3) “Volunteer service provider” means any physician, advanced registered nurse, registered nurse, psychologist, or social worker licensed in the District, and any person working under the supervision of a physician, advanced registered nurse, registered nurse, psychologist, or social worker licensed in the District, who provides health-care, rehabilitative, social, or related administrative services:

(A) At or on behalf of a free clinic;

(B) To or with respect to a patient of the clinic; and

(C) Without receiving payment from the District government for the performance of those services. (May 3, 1986, D.C. Law 6-112, § 2, 33 DCR 1748; Sept. 23, 1986, D.C. Law 6-155, § 2, 33 DCR 4809; Aug. 17, 1991, D.C. Law 9-41, § 2(a), (b), 38 DCR 4979.)

Section references. — This section is referred to in §§ 1-308.2 to 1-308.4, and 1-622.15.

Emergency act amendments. — For temporary extension of the Free Clinic Assistance Program Act of 1986 (D.C. Law 6-155) through the year 2001, see § 2 of the Free Clinic Assistance Program Extension Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-486, January 2, 1997, 44 DCR 632), and § 2 of the Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-38, March 31, 1997, 44 DCR 2042).

Section 4 of D.C. Act 12-38 provides for application of the act.

Legislative history of Law 6-112. — Law 6-112 was introduced in Council and assigned Bill No. 6-382. This Bill was adopted on first and second readings on February 11, 1986 and February 25, 1986, respectively. Signed by the Mayor on March 11, 1986, it was assigned Act No. 6-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-155. — Law 6-155, the “Free Clinic Assistance Program Act of 1986,” was introduced in Council and assigned Bill No. 6-466, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June

24, 1986 and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-198 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-41. — Law 9-41 was introduced in Council and assigned Bill No. 9-42, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-78 and transmitted to both Houses of Congress for its review.

Expiration of Law 6-155. — Section 7(b) of D.C. Law 6-155, as amended by § 2 of the Free Clinic Assistance Program Act of 1986 Amendment Emergency Act of 1988 (D.C. Act 7-203, June 30, 1988, 35 DCR 5439), § 2 of D.C. Law 7-172, § 2 of D.C. Law 7-223, § 4 of the Residential Property Tax Relief Act of 1977 Application Deadline and Free Clinic Assistance Program Act of 1986 Extension Emergency Amendment Act of 1991 (D.C. Act 9-83, September 13, 1991, 38 DCR 6021), § 4 of D.C. Law 9-53, § 3 of D.C. Law 9-65, and by § 2 of D.C. Law 11-175 provided that the act shall expire 15 years from the day it became effective. D.C. Law 6-155 became effective September 23, 1986.

§ 1-308.2. Same — Establishment.

(a) There is established a free clinic assistance program for free clinics that are unable to obtain medical liability insurance for themselves or their volunteer service providers. The purpose of this program is to provide District government indemnification for these clinics so that they may continue to assist the government in meeting the health-care needs of District residents. Under this program, if a free clinic meets the eligibility requirements of § 1-308.3, the District government shall be liable to third parties for injuries caused by the clinic’s or a volunteer service provider’s negligence in connection with the provision of health-care, rehabilitative, social, or related administrative services, except negligence claims for which the clinic is immune pursuant

to § 2-1345. Free clinics and volunteer service providers participating in the program shall be considered employees of the District government for the purposes of subchapter II of Chapter 12 of this title, but shall not be considered employees of the District government for the purposes of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, or for any purpose other than the indemnification provided by §§ 1-308.1 through 1-308.4.

(b) The free clinic assistance program shall be under the administrative control of the Mayor. (Sept. 23, 1986, D.C. Law 6-155, § 3, 33 DCR 4809; Aug. 17, 1991, D.C. Law 9-41, § 2(c), 38 DCR 4979.)

Section references. — This section is referred to in §§ 1-308.1, 1-308.3, 1-308.4, and 1-622.15.

Legislative history of Law 6-155. — See note to § 1-308.1.

Legislative history of Law 9-41. — See note to § 1-308.1.

Expiration of Law 6-155. — See note to § 1-308.1.

References in text. — The “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” cited in the fourth sentence of subsection (a), is D.C. Law 2-139.

§ 1-308.3. Same — Eligibility requirements.

(a)(1) To qualify for the free clinic assistance program established under § 1-308.2, a free clinic must satisfy the Mayor that:

(A) The medical liability insurance for the clinic or its volunteer service providers has been terminated or will be terminated within 15 days; and

(B) The clinic has made, and continues to make, diligent but unsuccessful efforts to renew its policy or to obtain new medical liability insurance.

(2) The Mayor may accept into the program a free clinic for which medical liability insurance is available, but only at a rate that is so high as to make it economically infeasible for the clinic to pay.

(b) Before becoming eligible for the free clinic assistance program, a free clinic and each volunteer service provider at that clinic shall sign a statement affirming the following:

(1) That the free clinic or volunteer service provider has been informed of the nature and scope of the services to be performed;

(2) That the free clinic or volunteer service provider has been informed of and understands all of the provisions of §§ 1-308.1 through 1-308.4 and the rules issued pursuant to §§ 1-308.1 through 1-308.4; and

(3) That the free clinic or volunteer service provider agrees to comply with all applicable terms and conditions as set forth in §§ 1-308.1 through 1-308.4 and the rules issued pursuant to §§ 1-308.1 through 1-308.4. (Sept. 23, 1986, D.C. Law 6-155, § 4, 33 DCR 4809.)

Section references. — This section is referred to in §§ 1-308.1, 1-308.2, 1-308.4, and 1-622.15.

Legislative history of Law 6-155. — See note to § 1-308.1.

Expiration of Law 6-155. — See note to § 1-308.1.

§ 1-308.4. Same — Rules.

The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue all rules necessary to carry out the purposes of §§ 1-308.1 through 1-308.4. Notwithstanding the absence of rules, free clinics and their volunteer service providers shall, if they meet the requirements of §§ 1-308.1 through 1-308.4, be eligible for the free clinic assistance program immediately on September 23, 1986. (Sept. 23, 1986, D.C. Law 6-155, § 5, 33 DCR 4809.)

Section references. — This section is referred to in §§ 1-308.1 to 1-308.3 and 1-622.15.

Legislative history of Law 6-155. — See note to § 1-308.1.

Expiration of Law 6-155. — See note to § 1-308.1.

Delegation of authority pursuant to Law 6-155, "Free Clinic Assistance Program Act of 1986". — See Mayor's Order 87-32, February 5, 1987.

Delegation of authority. — See Mayor's Order 88-100, April 26, 1988.

§ 1-309. Abolition or consolidation of offices; reduction of employees; appointments to and removal from office.

The Mayor of the District of Columbia is hereby authorized to abolish any office, to consolidate 2 or more offices, reduce the number of employees, remove from office, and make appointments to any office under him authorized by law. (June 11, 1878, 20 Stat. 104, ch. 180, § 3; 1973 Ed., § 1-216.)

Cross references. — As to Mayor's power to suspend employees from office, see § 1-337.

As to prohibition of discrimination in employment of blind or physically disabled persons, see § 6-1705.

As to forfeiture of one's position for violation of money lenders law, see § 26-705.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — Reorganization Order No. 3 of the Board of Commissioners,

dated August 28, 1952, established in the government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions and positions of the District Personnel Board. Reorganization Order No. 21 of the Board, dated November 20, 1952, established a Personnel Office in the Department of General Administration and provided that the functions previously vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 of 1952. Reorganization Order No. 40 of the Board of Commissioners, dated June 23, 1953, established the Executive Office of the Board of Commissioners under the direction and control of the Board of Commissioners to provide special and clerical assistance to the Board. The Order transferred to the new Executive Office all of the functions and positions of the previously existing Executive Office of the Board of Commissioners which the Order abolished. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The above-cited Reorganization Orders were revoked by Organization Order No. 2 of the Commissioner, dated December 13, 1967, which established the Executive Office of the Commissioner for the purpose of providing such managerial, budgetary, personnel, secretarial, informational

and special assistance as the Commissioner may require in the administration of the Government of the District of Columbia. Certain functions set forth in this Order subsequently were transferred by Commissioner's Order Nos. 69-96, 71-270, and 71-307, and by Organization Order No. 30.

Removal from office proper. — Where a

District employee was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him, removal was accomplished lawfully and he was not entitled to recover wages for the time he was in nonpay status. *Washington v. Government of D.C.*, App. D.C., 152 A.2d 191 (1959).

§ 1-310. Taxes not to be anticipated by sale or hypothecation.

The Mayor of the District of Columbia shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof. (June 11, 1878, 20 Stat. 104, ch. 180, § 3; 1973 Ed., § 1-219.)

Cross references. — As to restrictions on borrowing in anticipation of revenues, see § 47-328.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-311. Power to grant pardons and respites; commissioning of officers; execution of laws.

The Mayor of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the Legislative Assembly, and the police and building regulations of the District. He shall commission all officers appointed under the laws of the District, and shall take care that the laws be faithfully executed. (R.S., D.C., § 6; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Apr. 28, 1892, 27 Stat. 22, ch. 55; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951; 1973 Ed., § 1-220.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *District of Columbia v. Bailey*, 171 U.S. 161, 18 S. Ct. 868, 43 L. Ed. 118 (1898); *United States v. Narcisse*, 125 WLR 769 (Super. Ct. 1997).

§ 1-312. Hack stands — Location.

The Mayor of the District of Columbia shall have power to locate the places where hacks shall stand and change them as often as the public interests require. (June 11, 1878, 20 Stat. 104, ch. 180, § 3; 1973 Ed., § 1-221.)

Cross references. — As to authority of Mayor to prescribe regulations for establishment and location of hack stands, see § 40-703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-313. Same — Adjoining railroad stations; rates of charges.

Repealed.

(June 7, 1898, 30 Stat. 747, Res. No. 46; 1973 Ed., § 1-222; Mar. 25, 1987, D.C. Law 6-97, § 22(c), 33 DCR 703.)

Cross references. — As to authority of Council to regulate charges made by owners of hacks and hackney carriages, see § 1-315.

As to authority of Mayor to prescribe regulations for establishment and location of hack stands, see § 40-703.

As to powers of Mayor and Public Service Commission concerning public utilities, see § 43-411.

As to licensing and regulation of vehicles for hire, see § 47-2829.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

§ 1-314. Rates for public vehicles to be fixed by Mayor.

Repealed.

(Mar. 3, 1909, 35 Stat. 724, ch. 250; 1973 Ed., § 1-223; Mar. 25, 1987, D.C. Law 6-97, § 22(c), 33 DCR 703.)

Legislative history of Law 6-97. — See note to § 1-313.

§ 1-315. Regulations authorized in certain cases.

The Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, usual and reasonable police regulations in and for said District as follows:

(1) For causing full inspection to be made, at any reasonable times, of the places where the business of pawnbroking, junk-dealing, or second-hand clothing business may be carried on.

(2) To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

(3) To locate the places where licensed vendors on streets and public places shall stand, and change them as often as the public interests require, and to make all the necessary regulations governing their conduct upon the streets in relation to such business.

(4) To establish and regulate the charges to be made by owners of hacks and hackney carriages of any kind whatsoever.

(5) To prohibit conducting droves of animals upon such streets and avenues as it may deem needful to public safety and good order.

(6) To regulate the keeping of dogs and fowls.

(7) To prohibit the deposit upon the street or sidewalks of fruit, or any part thereof, or other substance or articles that might litter the same, or cause injury to or impede pedestrians.

(8) To regulate or prohibit loud noises with horns, gongs, or other instruments, or loud cries, upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as it may think necessary to public safety.

(9) To prescribe reasonable penalties, including civil penalties, for the infraction of the regulations mentioned in §§ 1-315 and 1-318. The penalties may be enforced in any court or administrative tribunal of the District of Columbia having jurisdiction of minor offenses or civil infractions, and in the same manner that minor offenses or civil infractions are by law prosecuted or adjudicated and punished. (Jan. 26, 1887, 24 Stat. 368, ch. 49, § 1; Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 3; 1973 Ed., § 1-224; Oct. 5, 1985, D.C. Law 6-42, § 483, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 27, 38 DCR 314.)

Cross references. — As to powers of Mayor over hack stands, see § 1-312.

As to authorization of additional penalties for violation of regulations, see § 1-316.

As to authorization of regulations regarding dogs, see § 1-317.

As to cleaning streets, see §§ 1-329 and 1-330.

As to Litter and Solid Waste Reduction Commission, see Chapter 32 of Title 2.

As to Mayor's powers of general police supervision over pawnbrokers and other certain classes of business, see §§ 4-147 to 4-150.

As to removal of ice and snow from sidewalks, see §§ 7-902 to 7-906.

As to requirement of licenses for businesses storing moving picture films, gasoline, kerosene, oils, explosives, and pyroxylin, see §§ 47-2813 to 47-2815.

As to requirement of licenses for secondhand dealers, see § 47-2837.

As to general provisions authorizing Council

to license businesses and to provide for inspection, supervision, or regulation thereof, see §§ 47-2842 and 47-2844.

Section references. — This section is referred to in §§ 1-316, 1-318, 1-319, and 1-321.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No.

8-320 and transmitted to both Houses of Congress for its review.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1978: The “District of Columbia Noise Control Act of 1977” (D.C. Law 2-53, Mar. 16, 1978, 24 DCR 5293) (as amended by D.C. Law 9-135, July 23, 1992, 39 DCR 4079) and the “Vendors Regulation Amendments Act of 1978” (D.C. Law 2-82, June 30, 1978, 24 DCR 9293).

Pursuant to this section, the following new regulations were adopted in 1979: The “District of Columbia Noise Control Amendments Act of 1979” (D.C. Law 3-17, Sept. 28, 1979, 26 DCR 229).

Pursuant to this section, the following new regulations were adopted in 1982: The “Taxicab Act of 1981” (D.C. Law 4-89, Mar. 31, 1982, 29 DCR 661).

Pursuant to this section, the following new regulations were adopted in 1982: The “Vendors Regulation Amendment Act of 1982” (D.C. Law 4-195, Mar. 10, 1983, 30 DCR 55).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(1) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the Dis-

trict of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Council may regulate, but not prohibit street vendors. — This section does not authorize the Council to prohibit vending on the streets or public places, but merely regulates such use. *Crane v. District of Columbia*, 289 F. 557 (D.C. Cir. 1923).

A police regulation designating stands for street vendors is valid. *Carranzo v. District of Columbia*, 10 F.2d 983 (D.C. Cir. 1926).

Council may establish both civil and criminal penalties. — Subsection (9) of this section authorizes the Council of the District of Columbia to establish both civil and criminal penalties for violating any vending regulations issued under subsection (3) of this section. *Karriem v. District of Columbia*, App. D.C., 717 A.2d 317 (1998).

“Minor offenses.” — “Minor offenses” in subsection (9) of this section refers to criminal rather than civil violations. *Karriem v. District of Columbia*, App. D.C., 717 A.2d 317 (1998).

Regulation prohibiting bootblack stand on public place declared unconstitutional as a violation of equal protection. *Brown v. Barry*, 710 F. Supp. 352 (D.D.C. 1989).

Cited in *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *District of Columbia v. Owens-Corning Fiberglas Corp.*, App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

§ 1-316. Additional penalties for violation of regulations.

The Council of the District of Columbia is hereby authorized to prescribe reasonable penalties of a fine not to exceed \$300 or imprisonment not to exceed 10 days, in lieu of or in addition to any fine, or to prescribe civil fines or other civil sanctions for the violation of any building regulation promulgated under authority of § 1-322, and any regulation promulgated under authority of § 1-315, and any regulation promulgated under authority of § 1-319. (Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 7; 1973 Ed., § 1-224a; Oct. 5, 1985, D.C. Law 6-42, § 446, 32 DCR 4450; Feb. 5, 1994, D.C. Law 10-68, § 5, 40 DCR 6311.)

Section references. — This section is referred to in § 1-317.

Legislative history of Law 6-42. — See note to § 1-315.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,”

was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for

its review. D.C. Law 10-68 became effective on February 5, 1994.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(2) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Whetzel v. Jess Fisher Mgt. Co., 282 F.2d 943 (D.C. Cir. 1960); Batres v. District of Columbia, App. D.C., 347 A.2d 585 (1975); Karriem v. District of Columbia, App. D.C., 717 A.2d 317 (1998).

§ 1-317. Regulations for the keeping, leashing, and running at large of dogs.

The Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in § 1-316. (Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 1; 1973 Ed., § 1-224b.)

Cross references. — As to other provisions relating to keeping and handling of dogs, see § 22-1111.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(3) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Evidence was sufficient to show violation of regulation promulgated under this section. Parry-Hill v. District of Columbia, App. D.C., 291 A.2d 505 (1972).

§ 1-318. Publication of regulations; effective date.

The regulations provided for in § 1-315 and adopted prior to October 21, 1968, shall be printed in 1 or more of the daily newspapers published in the District of Columbia; and no penalty prescribed for the violation of said regulations shall be enforced until 30 days after such publication. (Jan. 26, 1887, 24 Stat. 369, ch. 49, § 2; 1973 Ed., § 1-225; Aug. 2, 1983, D.C. Law 5-24, § 19, 30 DCR 3341; Mar. 14, 1985, D.C. Law 5-159, § 26, 32 DCR 30.)

Cross references. — As to other provisions for publication of rules and regulations, see §§ 4-177 and 4-178.

Section references. — This section is referred to in §§ 1-315, 1-319, and 1-321.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Cited in *Brown v. Barry*, 710 F. Supp. 352 (D.D.C. 1989).

§ 1-319. Regulations for protection of life, health, and property.

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, all such reasonable and usual police regulations in addition to those already made under §§ 1-315 and 1-318, as the Council may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia. (Feb. 26, 1892, 27 Stat. 394, Res. No. 4, § 2; 1973 Ed., § 1-226.)

Cross references. — As to rules and regulations concerning animals running at large, see §§ 1-315, 1-317, and 1-324.

As to additional penalties for violation of regulations, see § 1-315.

As to publication of rules and regulations, see § 1-318.

As to regulations concerning firearms, projectiles, explosives, and weapons, see § 1-321.

As to building regulations, see § 1-322.

As to regulations concerning construction, operation, and repair of elevators, see §§ 1-323 and 5-505.

As to regulations concerning out-of-door advertising signs, see §§ 1-325 to 1-327.

As to regulations concerning steam and pressure boilers, see §§ 1-1015 and 1-1018.

As to rules and regulations for production, use, and control of electricity, see § 1-1019.

As to regulations concerning plumbing and drainage, see § 1-1023.

As to rules and regulations governing accountants, see § 2-103.

As to rules and regulations governing boxing, see § 2-606.

As to rules and regulations governing Metropolitan Police Department, see §§ 4-107, 4-117, 4-118, 4-126, 4-128, 4-141, and 4-144.

As to rules and regulations concerning firemen, see §§ 4-302, 4-306 and 4-311.

As to rules and regulations governing parkings, see § 5-205.

As to zoning regulations, see § 5-413.

As to rules and regulations concerning fire escapes and safety provisions for buildings, see § 5-504.

As to rules and regulations by Department of Human Services, see §§ 6-110 through 6-113 and 6-117.

As to rules and regulations concerning collection of garbage and other refuse, see §§ 6-501 and 6-507.

As to rules and regulations for disposal of human excreta and waste, see § 6-603.

As to regulations for manufacture, renovation, and sale of mattresses, see §§ 6-803 and 6-806.

As to regulations governing federal government restaurants, see § 6-1301.

As to regulations for repairing streets, avenues, alleys, and sewers, see § 7-101.

As to regulations concerning lighting of streets, bridges, and other public places, see §§ 7-501 and 7-707.

As to rules and regulations for administration of Reagan National Airport, see § 7-1102.

As to rules and regulations governing conduct of municipal playgrounds and parks, see §§ 8-127 and 8-137.

As to rules, regulations, and fees concerning public convenience stations, see § 8-134.

As to rules and regulations for public beach and dressing houses, see § 8-162.

As to establishment of tolerances in weights, measures, and specifications, see §§ 10-118 and 10-129.

As to authorization to fix standards for loads of split wood, see § 10-119.

As to rules and regulations for public scales and fees of public weighmasters, see § 10-130.

As to regulations for produce markets, see § 10-132.

As to rules and regulations concerning municipal fish wharf and market, see § 10-137.

As to harbor regulations, see § 22-1701.

As to rules and regulations concerning discharge of parolees, see § 24-204.

As to rules and regulations for labor of prisoners, see § 24-412.

As to rules and regulations for administration and enforcement of Alcoholic Beverage Control Act, see §§ 25-106 and 25-107.

As to rules and regulations governing money lenders, see § 26-711.

As to rules and regulations concerning retirement of public school teachers, see § 31-1216.

As to rules and regulations for granting permits to operate medical and dental colleges, see § 31-1702.

As to rules and regulations to prevent adulteration of food and drugs, see § 33-104.

As to rules and regulations governing protection of the supply of milk, cream, or ice cream, see § 33-308.

As to rules and regulations governing insurance and insurance companies, see § 35-102.

As to rules and regulations to carry out minimum wage law, see § 36-220.2.

As to rules and regulations for registration of motor vehicles, see § 40-102.

As to rules and regulations concerning motor vehicles generally, see § 40-703.

As to rules and regulations governing public utilities, see § 43-411.

As to rules and regulations for licensing, inspection, or regulation of businesses, see § 47-2844.

As to rules and regulations concerning taxation, see § 47-3407.

Section references. — This section is referred to in §§ 1-316 and 1-321.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1978: The "Elimination of the Chest X-Ray Requirement Act of 1977" (D.C. Law 2-39, Feb. 2, 1978, 24 DCR 3175); the "Water Quality Standard Approval Act of 1977" (D.C. Law 2-68, Apr. 6, 1978, 24 DCR 6809); the "Fire Lanes and Fire Hydrants Act of 1977" (D.C. Law 2-90, June 30, 1978, 24 DCR 9759); the "Amended Eligibility Requirements for AFDC by Reason of the Employment of the Father Act of 1978" (D.C. Law 2-97, Aug. 12, 1978, 25 DCR 392); the "District of Columbia Child Development Facilities Regulation Amendment Act of 1978" (D.C. Law 2-98, Aug. 17, 1978, 25 DCR 245); the "Fire Safety Act of 1978" (D.C. Law 2-99, Aug. 17, 1978, 25 DCR 252); and the "Standards of Assistance Relating

to Persons Residing in Community Residence Facilities Act of 1978" (D.C. Law 2-108, Sept. 22, 1978, 25 DCR 1453).

Pursuant to this section, the following new regulations were adopted in 1979: The "Air Quality Control Regulations Amendment No. 3 of 1978" (D.C. Law 2-133, Mar. 3, 1979, 25 DCR 3490); the "District of Columbia Mental Health Information Act of 1978" (D.C. Law 2-136, Mar. 3, 1979, 25 DCR 5055); the "Air Quality Amendment Act No. II of 1978" (D.C. Law 2-151, Mar. 6, 1979, 25 DCR 2532); and the "Community Residence Facilities Licensure Act Amendments of 1979" (D.C. Law 3-27, Oct. 18, 1979, 26 DCR 667).

Pursuant to this section, the following new regulations were adopted in 1981: The "Second-hand Dealers Regulation and Rental Housing Act of 1980 Clarification Act of 1981" (D.C. Law 4-15, July 14, 1981, 28 DCR 2255).

Pursuant to this section, the following new regulations were adopted in 1981: The "Intermediate Paramedic Regulations Act of 1981" (D.C. Law 4-25, Aug. 1, 1981, 28 DCR 2622).

Pursuant to this section, the following new regulations were adopted in 1982: The "Enclosed Sidewalk Cafe Act of 1982" (D.C. Law 4-148, Sept. 17, 1982, 29 DCR 3361).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(4) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Council has broad delegation of police power from Congress. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323 (D.C. Cir. 1973).

Authority confirmed. — The legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily includes the function of enacting police regulations pursuant to this section and gun control measures

pursuant to § 1-321. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

In enacting § 1-233(a)(9), which limits the authority of the Council to enact certain criminal legislation, Congress did not intend to restrict the Council's authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Presumption of constitutionality of regulations. — There is a strong presumption of constitutionality afforded to regulations regulating businesses under police power in the interest of public safety, and one attacking such regulations on due process grounds carries the heavy burden of showing that the regulation is unreasonable and has no rational relationship to objective sought to be obtained. *Vanderhoof v. District of Columbia*, App. D.C., 269 A.2d 112 (1970).

Notice of regulations required. — It is improper to proclaim a District of Columbia police regulation and arrest a person for violating it without affording a reasonable period of time for notice. *Glover v. District of Columbia*, App. D.C., 250 A.2d 556 (1969).

Regulation of motor vehicles is entrusted to the Council for the protection of lives, limbs, health, comfort, and quiet of all persons. *White v. District of Columbia*, 4 F.2d 163 (D.C. Cir. 1925).

Regulation prohibiting tampering with automobile is authorized. — A police regulation making it a violation to tamper with an automobile is clearly authorized under this section. *Batres v. District of Columbia*, App. D.C., 347 A.2d 585 (1975).

And is constitutional. — A police regulation making it unlawful to tamper with a motor vehicle without the owner's permission provides adequate notice and standards concerning what conduct is proscribed and is not unconstitutionally vague. *In re R.F.H.*, App. D.C., 354 A.2d 844 (1976).

Regulation prohibiting possession of radar detectors does not violate due process. *Smith v. District of Columbia*, App. D.C., 436 A.2d 53 (1981).

Regulation prohibiting the possession of radar detectors serves a legitimate local concern and is not an unreasonable burden on interstate commerce. *Smith v. District of Columbia*, App. D.C., 436 A.2d 53 (1981).

Regulation prohibiting the possession of radar detectors is not preempted by the Federal Communications Act of 1934. *Smith v. District of Columbia*, App. D.C., 436 A.2d 53 (1981).

As is regulation prohibiting disruption of government business. — A regulation which provides that no person shall willfully and knowingly utter loud, threatening or abusive language or engage in disorderly conduct within any building owned or under the control

of the District with the intent to disrupt the orderly conduct of government business is valid under the 1st Amendment. The regulation is not overbroad and vague, and there is a valid state interest in regulating such conduct. *District of Columbia v. Gueory*, App. D.C., 376 A.2d 834 (1977).

Emergency curfew authorized. — The Council has authority under this section to issue a curfew barring all persons from the streets during certain hours when the city suddenly becomes rampant with rioting, looting, and burning. *Glover v. District of Columbia*, App. D.C., 250 A.2d 556 (1969).

And such curfew is not an unconstitutional abridgement of freedom to travel. *Glover v. District of Columbia*, App. D.C., 250 A.2d 556 (1969).

Regulation of collection of refuse. — It is within the police power of the Council to control and regulate the manner of collection and disposition of garbage, refuse, and filth, and in so doing it may provide for the inspection of premises as a health measure, but must not unduly infringe upon individual rights in absence of immediate danger or nuisance per se. *Little v. District of Columbia*, App. D.C., 62 A.2d 874 (1948), *aff'd*, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Prohibition of racial discrimination in employment is a "reasonable and usual regulation" within the terms of this section. *Newsweek Magazine v. District of Columbia Comm'n on Human Rights*, App. D.C., 376 A.2d 777 (1977), *cert. denied*, 434 U.S. 1014, 98 S. Ct. 729, 54 L. Ed. 2d 758 (1978).

Section not authority for building code regulations. — This section is not the authority for the Council to promulgate building code provisions. *Jones v. District of Columbia*, 212 F. Supp. 438 (D.D.C. 1962), *aff'd*, 323 F.2d 306 (D.C. Cir. 1963).

Police regulations held valid. — See *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323 (D.C. Cir. 1973); *Washington Mobilization Comm. v. Cullinane*, 566 F.2d 107 (D.C. Cir. 1977).

A police regulation prohibiting gambling on vacant or unoccupied property where the conduct can be seen or heard from a public highway was held valid under this section. *Green v. District of Columbia*, 710 F.2d 876 (D.C. Cir. 1983).

Cited in *Cave v. Rudolph*, 287 F. 989 (D.C. Cir. 1923); *Crane v. District of Columbia*, 289 F. 557 (D.C. Cir. 1923); *Coombe v. United States ex rel. Selis*, 3 F.2d 714 (D.C. Cir. 1925); *Mendota Apts. v. District of Columbia Comm'n of Human Rights*, App. D.C., 315 A.2d 832 (1974); *Spivey v. Barry*, 665 F.2d 1222 (D.C. Cir. 1981); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Brown v. Barry*, 710 F. Supp. 352 (D.D.C. 1989); *District of Colum-*

bia v. Owens-Corning Fiberglas Corp., App. D.C., 572 A.2d 394 (1989), cert. denied, 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173 (1990).

§ 1-320. Expenditures for emergencies.

When required by the public exigencies to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to expend such amounts as may be necessary without regard to advertising provisions of § 1-1110. (1973 Ed., § 1-226a; Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 1.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-321. Regulations relative to firearms, explosives, and weapons.

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, all such usual and reasonable police regulations, in addition to those already made under §§ 1-315, 1-318, and 1-319 as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia. (June 30, 1906, 34 Stat. 809, ch. 3932, § 4; 1973 Ed., § 1-227.)

Cross references. — As to prohibition against firearms, fireworks, or loud noises on Capitol grounds, see § 9-112.

As to criminal provisions concerning dangerous weapons, see Chapter 32 of Title 22.

As to the licensing, regulation, and supervision of dealers in dangerous weapons, see § 47-2838.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(4) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section is not inconsistent with home rule statute. McIntosh v. Washington, App. D.C., 395 A.2d 744 (1978).

Authority to regulate not preempted by enactment of gun control law. — Enactment of the gun control law (Chapter 32 of Title 22) in 1932 did not foreclose further exercise of power granted the Council by this section to make and enforce all regulations deemed necessary for regulation of firearms. Maryland & D.C. Rifle & Pistol Ass'n v. Washington, 442 F.2d 123 (D.C. Cir. 1971).

Authority confirmed. — The legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting gun control measures pursuant to this section. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

In enacting § 1-233(a)(9), which limits the authority of the District of Columbia Council to enact certain criminal legislation, Congress did not intend to restrict the Council's authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Firearms control law valid. — The Firearms Control Regulations Act (§ 6-2301 et seq.) constitutes a legitimate exercise of the authority vested in the District of Columbia Council by this section. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Regulations to be properly adopted, published, and applied. — Whatever rule is used in the District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law. *Jordan v. District of Columbia Bd. of Appeals & Review*, App. D.C., 315 A.2d 153 (1974).

Regulation not construed beyond its "plain meaning". — A police regulation prohibiting the sale of firearms to children may not be construed beyond its plain meaning, even though other provisions of the regulation may reveal an intent to include in the prohibition weapons not covered by the words used. *Tendler v. District of Columbia*, App. D.C., 50 A.2d 263 (1946).

§ 1-322. Building regulations.

(a) The Council of the District of Columbia is authorized and directed to make and the Mayor of the District of Columbia is authorized and directed to enforce such building regulations for the said District as the Council may deem advisable.

(b) Such rules and regulations made as above provided shall have the same force and effect within the District of Columbia as if enacted by Congress. (June 14, 1878, 20 Stat. 131, ch. 194, §§ 1, 2; 1973 Ed., § 1-228.)

Cross references. — As to power of Mayor to pardon violations of building regulations, see § 1-311.

As to imposition of additional penalties for violation of building regulations, see § 1-316.

As to power of Council to make rules and regulations respecting production, use, and control of electricity, see § 1-1019.

As to rules and regulations governing plumbing, house drainage, and ventilation, preservation, and maintenance of house and public sewers, see §§ 1-1023 and 1-1025.

Section references. — This section is referred to in § 1-316.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1982: The "Enclosed Sidewalk Cafe Act of 1982" (D.C. Law 4-148, Sept. 17, 1982, 29 DCR 3361).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(5) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Requirements for validity of regulations. — In order to be valid, building regulations must be reasonable and not arbitrary, and must have a tendency to promote the public health, safety, or general welfare. *D.J. Dunigan, Inc. v. District of Columbia*, 44 F.2d 892 (D.C. Cir. 1930).

Housing Code not applicable to temporary residential properties of Redevelopment Land Agency. — Where the District of Columbia Redevelopment Land Agency maintained properties acquired by it as temporary residences used only until relocation housing for residents becomes available and redevelop-

ment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502 (D.C. Cir. 1974), cert. denied, 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271 (1975).

Section not authority for fire regulations. — See *Jones v. District of Columbia*, 212 F. Supp. 438 (D.D.C. 1963), aff'd, 323 F.2d 306 (D.C. Cir. 1963)

Cited in *Smoot v. Heyl*, 227 U.S. 518, 33 S. Ct. 336, 57 L. Ed. 621 (1913); *Walker v. Gish*, 260 U.S. 447, 43 S. Ct. 174, 67 L. Ed. 344 (1923); *Simmons v. District of Columbia*, 290 F. 347 (D.C. Cir. 1923); *Hill v. Raymond*, 81 F.2d 278 (D.C. Cir. 1936); *Ancher v. Lamb*, App. D.C., 86 A.2d 533 (1952); *Curtis v. District of Columbia*, 363 F.2d 973 (D.C. Cir. 1966).

§ 1-323. Regulations for construction, repair, and operation of elevators.

(a) The Council of the District of Columbia is hereby authorized and directed to make and publish such orders as may be necessary to regulate the construction, repair, and operation of all elevators within the District of Columbia, and prescribe such means of security as may be found necessary to protect life and limb.

(b) Any person or persons, or corporation, who shall neglect or refuse to comply with the orders made pursuant to this section shall, upon conviction thereof in the Superior Court of the District of Columbia, on information filed in the name of the District of Columbia, be fined not less than \$10 nor more than \$100 for each offense.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the orders made pursuant to this section in accordance with subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1887, 24 Stat. 580, ch. 390, §§ 1, 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 1-229; March 3, 1887, § 3, as added Oct. 5, 1985, D.C. Law 6-42, § 481, 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 1-315.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1982: The "Elevator Code Amendment Act of 1981" (D.C. Law 4-91, Mar. 31, 1982, 29 DCR 683).

Pursuant to this section, the following new regulations were adopted in 1984: The "Apartment House Elevator Act of 1984" (D.C. Law 5-132, Mar. 13, 1985, 32 DCR 1717).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(6) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Delegation of authority under law promulgating rules for adoption of new construction codes. — See Mayor's Order 84-146, August 23, 1984.

Failure to exercise ordinary care. — The Elevator Code does not insulate persons from the legal consequences of their failure to exer-

cise ordinary care. *District of Columbia v. Brown*, App. D.C., 589 A.2d 384 (1991).

Contributory negligence. — The trial court erred in failing to grant the District's motion for directed verdict and post-trial motion for judgment notwithstanding the verdict where decedent's deliberate striking of an elevator door with his shoulder, causing his fall into the shaft and his death, was contributorily negligent as a matter of law. *District of Columbia v. Brown*, App. D.C., 589 A.2d 384 (1991).

Trial judge to determine whether Elevator Code is a public safety regulation. —

The question of whether the Elevator Code is a public safety regulation that excuses ordinary contributory negligence but not aggravated contributory negligence (willful, wanton or reckless conduct) is a question of law that the trial judge should decide. *District of Columbia v. Brown*, App. D.C., 589 A.2d 384 (1991).

§ 1-324. Pleuropneumonia.

Whenever any contagious, infectious, or communicable disease affecting domestic animals or live poultry, and especially the disease known as pleuropneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Council of said District to take measures to suppress the same promptly and to prevent the same from spreading; and for this purpose the said Council is empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Secretary of Agriculture whatever it may do in pursuance of the provisions of this section. (May 29, 1884, 23 Stat. 33, ch. 60, § 8; Feb. 7, 1928, 45 Stat. 59, ch. 30; 1973 Ed., § 1-230a.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(430) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-325. Outdoor signs — Regulations.

The Council of the District of Columbia is authorized and empowered after public hearings to make, and the Mayor of the District of Columbia is authorized and empowered to enforce, such regulations as the Council may deem advisable to (insofar as necessary to promote the public health, safety, morals, and welfare) control, restrict, and govern the erection, hanging, placing, painting, display, and maintenance of all outdoor signs and other forms of exterior advertising on public ways and public space under the

Mayor's control and on private property within public view within the District of Columbia, and such regulations as may be promulgated hereunder shall have the force and effect of law. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 1; 1973 Ed., § 1-231.)

Cross references. — As to real estate sale or rent signs, see § 45-2001.

Section references. — This section is referred to in § 1-327.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(8) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Bus shelters. — See the Act of May 10, 1980, D.C. Law 3-67.

§ 1-326. Same — License required; fee.

(a) No person, persons, firm, or corporation shall engage in the business of erecting, hanging, placing, painting, displaying, or maintaining any sign for outdoor display within the District of Columbia without first having obtained a license therefor from the Superintendent of Licenses of the District of Columbia, which license shall bear an identification number; provided, that no license shall issue without the prepayment of \$14 to the District of Columbia Treasurer, and a fee of \$28, paid biennially. For good cause shown the Mayor of the District of Columbia shall have the power to reject any application for a license hereunder, or, where license has been issued, to revoke it, or, upon determination of liability therefor, to impose civil fines pursuant to subchapters I through III of Chapter 27 of Title 6.

(b) Any license issued pursuant to this section shall be issued as a Class B General Services and Repair endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Code. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 2; 1973 Ed., § 1-232; Sept. 14, 1976, D.C. Law 1-82, title I, § 102, 23 DCR 2461; Oct. 5, 1985, D.C. Law 6-42, § 421, 32 DCR 4450; Sept. 26, 1995, D.C. Law 11-52, § 301, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-261, § 2003(a), 46 DCR 3142.)

Section references. — This section is referred to in § 1-327.

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 1-82. — Law 1-82 was introduced in Council and assigned Bill No. 1-237, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 23, 1976, and April 6, 1976, respectively. Signed

by the Mayor on June 22, 1976, it was assigned Act No. 1-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-42. — See note to § 1-315.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order

No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3 dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue was transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Transfer of function. — Commissioner's Order No. 69-96, dated March 7, 1969, transferred to the Director of the Department of Economic Development the function of business and professional licensing. The Department of Economic Development was replaced by the Department of Licenses, Investigation and Inspections by Mayor's Order 78-42, dated February 17, 1978. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

§ 1-327. Same — Penalties; publication of regulations.

(a) Any person, persons, firm, or corporation, whether as principal, agent, or employee, violating §§ 1-325 to 1-327 or any of the regulations promulgated pursuant to said sections shall, upon conviction thereof in the Superior Court of the District of Columbia, be fined not less than \$5 nor more than \$200 for each and every offense, and a like fine shall be imposed for each and every day thereafter that such violation of law shall continue: Provided, that the

regulations promulgated hereunder shall be printed in one of the daily newspapers published in the District of Columbia, and no penalty prescribed for the violation of said regulations shall be enforced until 30 days after the publication of such regulations.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of §§ 1-325 to 1-327, or any rules or regulations issued under the authority of §§ 1-325 to 1-327, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of §§ 1-325 to 1-327 shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 1-233; Oct. 5, 1985, D.C. Law 6-42, § 457, 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 1-315.

§ 1-328. Maintenance of lights outside city limits.

The Mayor of the District of Columbia shall have power to erect light, and maintain lamp posts, with lamps, outside of the city limits, when, in his judgment, it shall be deemed proper or necessary. (June 11, 1878, 20 Stat. 104, ch. 180, § 3; 1973 Ed., § 1-234.)

Cross references. — As to lighting of streets, bridges, and other public places, see § 7-501 and Chapter 7 of Title 7.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-329. Cleaning streets, alleys, and avenues; maintenance of sewers.

The sweeping, cleaning, and removing all refuse and filthy accumulations in the streets, alleys, and avenues of the City of Washington, and the repairs and cleaning of the sewers, are necessary municipal objects, which belong to the current expenses of the same, to be paid for in money as other ordinary municipal expenses. (Mar. 1, 1875, 18 Stat. 337, ch. 117; Feb. 11, 1895, 28 Stat. 650, ch. 79; 1973 Ed., § 1-235.)

Cross references. — As to other provisions concerning collection and disposal of city refuse, see Chapter 5 of Title 6.

As to regulations concerning repair of highways and sewers, see § 7-101.

As to removal of ice and snow from sidewalks, see Chapter 9 of Title 7.

§ 1-330. Sale of street sweepings authorized.

The Mayor of the District of Columbia is authorized to sell sweepings from the streets, the amounts realized from such sales to be deposited in the treasury, to the credit of the General Fund of the District of Columbia. (Apr. 27, 1904, 33 Stat. 373, ch. 1628; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 1-236; Sept. 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-331. Investigations of municipal matters; authority to administer oaths.

After July 1, 1902, the several provisions of §§ 4-801 to 4-803 shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Mayor of the District of Columbia, and the Council of the District of Columbia with respect to functions transferred to it by Reorganization Plan No. 3 of 1967, as well as to the proceedings before the trial boards named in said sections; and said Mayor and each member of the Council are hereby authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid. (July 1, 1902, 32 Stat. 591, ch. 1352; 1973 Ed., § 1-237.)

Cross references. — As to investigative authority of Council of the District of Columbia, see § 1-234.

As to refusal of District employee to give testimony relating to his office or employment, see § 1-506.

Section references. — This section is referred to in §§ 1-2528 and 1-2541.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(9) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Barrett v. Young, 134 F. Supp. 106 (D.D.C. 1951).

§ 1-332. Annual report to Congress.

Repealed.

(June 11, 1878, 20 Stat. 108, ch. 180, § 12; 1973 Ed., § 1-238; Aug. 2, 1983, D.C. Law 5-24, § 20, 30 DCR 3341.)

Legislative history of Law 5-24. — See note to § 1-318.

Organic Act of 1878. — Section 12 of the Act of June 11, 1878, 20 Stat. 108, ch. 180, read, in its entirety, as follows: "It shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amend-

ments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia: and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December."

§ 1-333. Illustrations in annual reports prohibited unless authorized by Mayor.

Hereafter no department, board, office, or agency of the government of the District of Columbia shall include any illustration in any annual report prepared by it unless such illustration be authorized under order or regulation approved by the Mayor of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1; July 21, 1959, 73 Stat. 223, Pub. L. 86-101, § 1; 1973 Ed., § 1-239.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-334. Originals of discontinued reports to be preserved for public inspection.

In all cases where the printing of annual or special reports of the government of the District of Columbia is discontinued, the original copy thereof shall be kept on file in the Office of the Mayor of the District of Columbia for public inspection. (May 21, 1928, 45 Stat. 649, ch. 659; 1973 Ed., § 1-240.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

§ 1-335. Appropriations for printing schedules or lists of supplies and materials.

No part of any appropriation for the District of Columbia, except for public schools, shall be expended for printing or binding a schedule or list of supplies and materials for the furnishing of which contracts have been or may be awarded. (June 28, 1944, 58 Stat. 533, ch. 300, § 13; 1973 Ed., § 1-242.)

§ 1-336. Leasing authority.

(a) The Director of the Office of Contracting and Procurement is authorized to enter into lease agreements with any person, copartnership, corporation, or other entity, which do not bind the government of the District of Columbia for periods in excess of 20 years for each such lease agreement, on such terms and conditions, including, without limitation, lease-purchase, as he deems to be in the interest of the District of Columbia and necessary for the accommodation of District of Columbia agencies and activities in buildings or other improvements which are in existence or are to be constructed by the lessor for such purposes, or on unimproved real property.

(b) No lease agreement entered into under subsection (a) of this section shall provide for the payment of rental in excess of the limitations prescribed by § 278a of Title 40, United States Code, except that the provisions of this subsection shall not apply to leases made prior to January 5, 1971, except when renewals thereof are made after such date.

(c) No funds under the control of the Mayor shall be obligated or expended to construct, alter, purchase, or acquire any building or interest in any building to be used as a public building for the District government or to house a program funded through the District government that involves a total expenditure in excess of \$1,000,000 unless the proposed construction, alteration, purchase, or acquisition has been submitted to and approved by the Council, by resolution. No funds under the control of the Mayor shall be obligated or expended to lease any space at an average annual gross rental in excess of \$1,000,000 over the lease period, inclusive of all options, for use for public purposes by the District government or to house a program funded through the District government unless the proposed lease agreement has been submitted to and approved by the Council, by resolution. No funds under the control of the Mayor shall be obligated or expended to alter any building or part of any building that is under lease by the District government for a public purpose if the cost of the alteration would exceed \$500,000, unless the proposed alteration has been submitted to and approved by the Council, by resolution. The Mayor shall not designate a developer for city-owned property unless the developer has been selected through competitive procedures in accordance with subchapter III of Chapter 11A of Title 1, and the proposal has been submitted to the Council for a 60-day period of review, exclusive of days of

Council recess, pursuant to subsection (d) of this section and approved by the Council by resolution. The Mayor shall submit with the request for approval a prospectus of the proposed facility that shall include, but is not limited to:

(1) A brief description of the building to be constructed, altered, purchased, or acquired, or the space to be leased, including its location, size, condition if applicable, and its conformity with allowable uses under the Zoning Regulations;

(2) An estimate of the gross and net costs to the District government of the facility to be constructed, altered, purchased, or acquired, or the space to be leased;

(3) The facility's conformity with the Public Facilities Plan developed pursuant to Title VI of the District of Columbia Comprehensive Plan Act of 1984;

(4) A statement by the Director of the Office of Contracting and Procurement that suitable space owned by the District is not available or cannot be reasonably renovated or altered and that suitable rental space is not available at a price commensurate with the space and price to be afforded through the proposed action, including a current survey of suitable vacant rental office space;

(5) A certification by the Director of the Office of Contracting and Procurement that no other public space is available, including surplus government property that is under the control of the Board of Education; and

(6) A statement by the Director of the Office of Contracting and Procurement of rents and other housing costs currently being paid by the District for entities of the District government to be housed in the building to be constructed, altered, purchased, or acquired, or the space to be leased.

(d) Except as provided in subsection (d-1) of this section, the Director of the Office of Contracting and Procurement shall, pursuant to subsection (c) of this section, transmit to the Council a proposed resolution of approval for a 60-day period of review, exclusive of days of Council recess. If the Council takes no action to approve or disapprove the proposed resolution within the 60-day period, the proposed resolution shall be deemed approved. Factors governing the Council's consideration of the proposed resolution may include, but are not limited to, the following:

(1) The availability of adequate funds;

(2) The integrity of the selection process; and

(3) Whether the proposal is in the best interests of the District.

(d-1) Notwithstanding subsection (d) of this section, the proposed resolution of approval with respect to any lease which is required to be approved by the Council pursuant to subsection (c) of this section, and which is negotiated on behalf of the District by duly licensed commercial real estate brokers pursuant to tenant representative services contracts then in effect between the District and such brokers, shall be transmitted to the Council for a review period of 15 calendar days. If the Council takes no action to approve or disapprove the proposed resolution within the 15-day period, the proposed resolution shall be deemed approved.

(e) The estimated maximum cost of any project approved pursuant to this section may be increased by an amount equal to the increase, if any, as

determined by the Director of the Office of Contracting and Procurement, in construction or alteration costs, from the date of transmittal of the prospectus to the Council, not to exceed 10% of the estimated gross cost.

(f) Repealed.

(g) The Director of the Office of Contracting and Procurement shall not make any agreement or undertake any commitment that will result in the construction of any building that is to be constructed for lease to, and for predominant use by, the District until the Director of the Office of Contracting and Procurement has established detailed specification requirements for the building and unless the proposal is consistent with the Public Facilities Plan.

(h) Repealed.

(h-1) The Director of the Office of Contracting and Procurement may acquire a new leasehold interest in any building that is proposed to be leased for the predominant use of rentable space by, or constructed for lease to and for predominant use of rentable space by the District government without regard to §§ 1-1183.3 and 1-1183.4; provided that such leasehold interest is acquired pursuant to a lease negotiated on behalf of the District by a duly licensed commercial real estate broker pursuant to a tenant representative services contract then in effect between the District and the broker.

(i) The Director of the Office of Contracting and Procurement shall inspect every building to be constructed for lease to, and for predominant use by, the District government during the construction of the building in order to determine compliance with the specifications established for the building. Upon the completion of the building, the Director of the Office of Contracting and Procurement shall evaluate the building to determine the extent, if any, of failure to comply with the specifications for the building. The Director of the Office of Contracting and Procurement shall ensure that any contract entered into for a leasehold interest in a building shall contain a provision that permits a reduction in rent during any period that the building is not in compliance with the specifications for the building. (Jan. 5, 1971, 84 Stat. 1939, Pub. L. 91-650, title VII, § 705(a), (b); 1973 Ed., § 1-243b; Mar. 8, 1991, D.C. Law 8-257, § 2, 38 DCR 969; Apr. 12, 1997, D.C. Law 11-259, § 301, 44 DCR 1423; May 7, 1998, D.C. Law 12-104, § 4, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, §§ 4, 59(b), 46 DCR 2118.)

Section references. — This section is referred to in § 31-1535.

Effect of amendments. — Section 301 of D.C. Law 11-259 substituted “The Director of the Office of Contracting and Procurement” for “The Mayor of the District of Columbia” in (a), rewrote the fourth sentence in (c), repealed (f) and (h), and substituted “Director of the Office of Contracting and Procurement” for “Mayor” throughout.

D.C. Law 12-104, in (d), added “Except as provided in subsection (d-1) of this section” in the introductory language; inserted (d-1); and added (h-1).

D.C. Law 12-264, in (d), substituted “the Director of the Office of Contracting and Procurement” for “the Mayor.”

Temporary amendment of section. — Section 2 of D.C. Law 12-5, in (d), added “Except as provided in subsection (d-1)” in the introductory language; inserted (d-1); and added (h)(2).

Section 4(b) of D.C. Law 12-5 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Tenant Representative Services Lease Negotiation and Review Emergency Amendment Act of 1997 (D.C. Act 12-4, February 24, 1997, 44 DCR 1607), § 2 of the Tenant Representative Services Lease Negotiation and Review Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-81, June 10, 1997, 44 DCR

3607), and § 2 of the Tenant Representative Services Lease Negotiation and Review Emergency Amendment Act of 1998 (D.C. Act 12-269, February 19, 1998, 45 DCR 1332).

Section 3 of D.C. Act 12-81 provides for the application of the act.

Section 4 of D.C. Act 12-269 provided for application of the act.

For temporary amendment of section, see § 4 of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Legislative history of Law 8-257. — Law 8-257 was introduced in Council and assigned Bill No. 8-645, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-342 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-92. — Law 11-92, the "Acquisition of Space Needs For District Government Officers and Employees Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-494. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-175 and transmitted to both Houses of Congress for its review. D.C. Law 11-92 became effective on February 27, 1996.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 12-5. — Law 12-5, the "Tenant Representative Services Lease Negotiation and Review Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-27. The Bill was adopted on first and second readings on January 21, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 24, 1997, it was assigned Act No. 12-61 and transmitted to both Houses of Congress for its review. D.C. Law 12-5 became effective on June 5, 1997.

Legislative history of Law 12-104. — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in text. — Section 278a of Title 40, United States Code, referred to in (b), was repealed by Pub. L. 100-678, § 7, Nov. 17, 1988, 102 Stat. 4052.

"The District of Columbia Comprehensive Plan Act of 1984", referred to in (c)(3), is D.C. Law 5-76.

The "Public Facilities Plan", referred to in (g), is Title VI of D.C. Law 5-76.

Lease/Purchase of Building and Land at 441-4th Street, N.W. (One Judiciary Square: Lot 20; Square 532) Emergency Approval Resolution of 1991. — Pursuant to Resolution 9-94, effective July 19, 1991, the Council approved, on an emergency basis, the District of Columbia's purchase of an office building and lease/purchase of the land at 441-4th Street, N.W. to be used for municipal purposes.

717 Fourteenth Street, N.W. Lease Approval Emergency Resolution of 1997. — Pursuant to Resolution 12-348, effective December 19, 1997, the Council approved, on an emergency basis, the Lease Agreement between the District of Columbia government and 711 Fourteenth Street, N.W., Associates Limited Partnership, and to exempt this lease from the formal competitive procurement requirements applicable to leases where the District will be the predominant user of the building.

1300 First Street, N.E. Lease Approval Emergency Resolution of 1998. — Pursuant to Resolution 12-489, effective May 5, 1998, the Council approved, on an emergency basis, the Lease Agreement between the District of Columbia government and Edward R. Webster Company for 1300 First Street, N.E.

Delegation of contracting authority. — See Mayor's Order 90-178, November 19, 1990.

See Mayor's Order 92-153, December 1, 1992.

Delegation of Authority under Public Law 91-650, D.C. Code § 1-336. — See Mayor's Order 93-6, January 15, 1993.

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. —

See Mayor's Order 96-83, June 20, 1996 (43 DCR 3510).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 96-136, September 9, 1996 (43 DCR 5043).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 96-152, October 17, 1996 (43 DCR 5855).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services. — See Mayor's Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor's Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator. — See Mayor's Order 97-6, January 9, 1997 (44 DCR 357).

65 K Street, N.E., Lease Amendment Approval Emergency Resolution of 1994. — Pursuant to Resolution 10-500, effective December 6, 1994, the Council approved, on an emergency basis, the amendment of a lease for 65 K Street, N.E.

University of the District of Columbia Acquisition of 4250 Connecticut Avenue Authorization Resolution of 1995. — Pursuant to Resolution 11-192, effective December 5, 1995, the Council approved the acquisition, by the University of the District of Columbia, of an interest in a ground lease of Lot 1 in Square 2047 and the purchase of improvements situ-

ated thereon known as 4250 Connecticut Avenue, N.W., to be used for governmental purposes.

Editor's notes. — D.C. Law 12-104 purported to designate the existing text in (h) as (h)(1), and added a new (h)(2). However, (h) was repealed by D.C. Law 11-259. At the direction of the D.C. Codification Counsel, (h)(2) has been redesignated as new (h-1).

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Applicability of §§ 1-1181.1 et seq. — Lease/purchase agreement was not binding until, at the earliest, the Mayor approved the agreement. The Mayor's approval occurred three days after the enactment of D.C. Emergency Act 8-264 which made §§ 1-1181.1 to 1-1192.6 applicable to this section, therefore, the agreement was subject to the competitive bidding requirements of §§ 1-1181.1 to 1-1192.6 prior to the time the Mayor had given his approval. *RDP Dev. Corp. v. District of Columbia*, App. D.C., 645 A.2d 1078 (1994).

§ 1-337. Additional powers of Mayor, Council, and Director.

(a) *Waiver of business license renewal fees for personnel of armed forces.* — The Council of the District of Columbia is authorized and empowered within its discretion, in accordance with such regulations as it may make, to provide for the waiver of payment by any person in the military service of the United States of any annual or other periodic fee required by law to be paid to the District of Columbia or to any District of Columbia board or commission as a condition to retaining or renewing any license or permit to engage in any business or calling or to practice any profession in the District of Columbia.

(b) *Bond requirements for certain businesses; amount; termination of surety's liability; notification by surety of payment on bond; insolvency of surety; action on bond; amount of recovery; certified copy of bond; license examination.* — (1) The Council of the District of Columbia is authorized and empowered within its discretion to make and modify, and the Mayor of the District of Columbia is authorized and empowered within his discretion to enforce, regulations requiring persons, firms, and corporations, other than utility companies, engaged within the District of Columbia in the business of

plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilating, air conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems, or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current, to furnish and keep in force a bond running to the District of Columbia with corporate surety authorized by the Secretary of the Treasury to do business pursuant to § 9305 of Title 31, United States Code, or by the Insurance Department of the District of Columbia to issue surety bonds in the District of Columbia which meet the statutory capital and surplus requirements or as otherwise determined by the Mayor to be appropriate and necessary in the amount for underwriting such bonds in an amount not exceeding \$5,000, conditioned upon the performance in accordance with law and regulations in force in the District of Columbia of all such work undertaken by such person, firm, or corporation, and to keep the District of Columbia harmless from the consequences of any and all acts performed by said person, firm, or corporation in connection with such business during the period covered by the said bond.

(2) The surety on any such bond may terminate its liability under such bond by giving 30 days written notice thereof, served either personally or by registered mail, to the principal and to the Mayor; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of 30 days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal to engage in such business shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Mayor.

(3) In the event the surety becomes insolvent or a bankrupt, or ceases to be authorized by the Secretary of the Treasury to do business pursuant to § 8 of Title 6, United States Code, or by the Insurance Department of the District of Columbia, to do business in the District of Columbia, the principal shall, within 10 days after notice thereof, given by the Mayor, duly file a new bond in like amount and conditioned as the original, and, if the principal shall fail to do so, the license of such principal shall terminate. If a recovery be had on any bond, the principal shall restore the bond to its original amount.

(4) Any person aggrieved by the violation of any law or regulation in force in the District of Columbia relating to such business shall have, in addition to his right of action against said person, firm, or corporation, a right to bring suit against the surety on said bond, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the principal which is in violation of law or regulation in force in the District of Columbia relating to such business: Provided, however, that nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

(5) The Mayor shall furnish to anyone applying therefor a certified copy of any such bond filed with them upon payment of a fee to be fixed by the Mayor therefor, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, or corporation whose name appears therein.

(6) The Council is further authorized to provide, in accordance with such regulations as it may prescribe, for the examination of the qualifications and fitness of all applicants for licenses to engage in any of the businesses herein enumerated by a board, consisting of not less than 2 persons who have been actively engaged in the District of Columbia for at least 5 years next preceding their appointment in the business for which license is sought (one of whom shall have been an owner or manager and one of whom shall have been an employee competent to superintend the performance of work) and not less than 1 official of the District of Columbia, appointed by the said Mayor: Provided, that nothing herein shall repeal existing law relating to the examination and licensing of master plumbers and gas fitters.

(c) *Leasing powers.* — The Mayor of the District of Columbia is authorized and empowered within his discretion to rent any building or land belonging to the District of Columbia or under the jurisdiction of the Mayor, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired, and to rent any used personal property belonging to the District of Columbia which is not then needed for the purpose for which it was acquired: Provided, that nothing contained in this subsection shall have the effect of changing in any manner Public Law No. 732, 74th Congress, entitled “An Act to authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes”, approved June 20, 1936 (20 U.S.C. §§ 107 — 107f).

(d) *Issuance of revocable permits for construction of tunnels, and laying of conduits and pipes.* — The Mayor of the District of Columbia is authorized and empowered within his discretion to grant revocable permits upon such terms, conditions, bonds, and rentals as the Mayor may impose for the construction of tunnels, and the laying of conduits and pipes in the alleys, streets, and avenues in the District of Columbia under the jurisdiction of the Mayor.

(e) *Suspension of officers and employees.* — Except as otherwise provided, the Mayor of the District of Columbia is authorized and empowered within his discretion to suspend, with or without pay, any officer or employee appointed by him and, under such rules or regulations as he may prescribe, to delegate this power to any officers or employees of the District of Columbia.

(f) *Name and rename highways, buildings, public places and property.* — The Council of the District of Columbia is authorized and empowered within its discretion to name or change the name of a highway, circle, bridge, building, park or other public place or property as provided in §§ 7-451 through 7-459:

(1) Repealed.

(2) The name of any person shall embrace the given name or names as well as the surname of such person and shall be so noted on the records of the Council of the District of Columbia and official records filed with the Surveyor of the District of Columbia.

(g) *Assess and collect fees for copies and transcripts of regulations, permits, certificates and records; disposition of moneys.* — The Mayor of the District of Columbia may fix, assess, and collect fees for copies of orders, regulations, permits, certificates, and transcripts of records furnished by the District of Columbia, including, but not limited to, transcripts of records of births and deaths. Such fees shall not exceed the reasonably estimated cost of providing such copies, certificates, and transcripts, and shall be deposited into the General Fund of the District of Columbia government.

(h) *Penalties for violation of rules and regulations.* — The Council of the District of Columbia is authorized and empowered within its discretion, where not otherwise specifically provided, to prescribe a penalty upon conviction of a violation of any rule or regulation authorized by §§ 1-337 to 1-340, 1-342 and 1-343 by a fine of not more than \$300 or imprisonment of not more than 90 days.

(i) *Purchase and sale of maps and publications; issuance without charge; delegation of authority; payment of cost.* — The Mayor of the District of Columbia is authorized and empowered within his or her discretion:

(1) To purchase and sell maps and to sell copies and subscriptions of the District of Columbia Statutes-at-Large, the District of Columbia Register, the District of Columbia Municipal Regulations, other government publications, and other data and information (“government materials”), including binders for material, at prices the Mayor or his or her designated agent determines to be necessary to approximate the cost of the material, including the cost of distribution. The Mayor shall not charge the Council of the District of Columbia for copies or subscriptions of government materials or any other rule, regulation, or document that has general applicability and legal effect which the Council needs to perform its legislative responsibilities. All receipts from the sale of such material shall be deposited in the General Fund;

(2) To issue such material without charge, in the discretion of the Mayor, to officers and employees of the governments of the United States and the District of Columbia, to states, territories, and possessions of the United States, local governmental units, and foreign governments; to institutions of research and learning; to applicants for, or holders of, particular licenses issued by the District of Columbia; and to any other person when it is determined by said Mayor or his designated agent or agents that it is in the best interest of the District of Columbia to furnish such material without charge; and to delegate to the heads of departments and agencies of the government of the District of Columbia the authority likewise to make the distribution authorized by this paragraph of such material as may be purchased by the departments and agencies. Material to be distributed under the authority of this paragraph shall be supplied to the District of Columbia department or agency proposing to make such distribution, only upon payment by the department or agency of the cost thereof.

(j) *Placement of orders with federal departments and agencies; payment of cost; obligations upon appropriations.* — The Director of the Office of Contracting and Procurement is authorized and empowered in his discretion to place orders, if he determines it to be in the best interest of the District of Columbia,

with any federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such federal agency may be in a position to supply or be equipped to render, by contract or otherwise, and shall pay promptly by check to such federal agency, upon its written request, either in advance or upon furnishing or performance thereof, all or part of the estimated or actual costs thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual costs of the materials, supplies or equipment furnished or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(k) *Placement of orders with departments, offices, or agencies of the District; payment of cost; obligations upon appropriations.* — (1) The Director of the Office of Contracting and Procurement is authorized and empowered in his discretion to authorize any department, office, or agency of the District of Columbia government, when it is determined to be in the best interest of the District of Columbia so to do, place orders with any other department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that such requisitioned department, office, or agency may be in a position to supply or equipped to render. The department, office, or agency placing any such orders shall either advance, subject to proper adjustment on the basis of actual cost, or reimburse, such department, office or agency the actual cost of materials, supplies, or equipment furnished or work or services performed as determined by such department, office, or agency as may be requisitioned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(2) Repealed.

(l) *Leases or permits for use of public space over or under 9th Street Southwest.* — The Mayor of the District of Columbia is authorized and empowered in his discretion to enter into leases of, or to grant revocable permits for the use of, the public space over or under 9th Street Southwest in the District of Columbia to an extent not inconsistent with the use of such street by the general public for the purpose of travel, and in connection with any such lease or permit to impose such terms, including but not limited to the deposit of bond or other security, and to provide for the payment of such rents or fees as the Mayor may, in his discretion, determine to be necessary or desirable, but the Mayor shall, in connection with entering into a lease for, or granting a permit for, the use of public space over said Street in the District of Columbia, provide as a condition of any such lease or permit that such space shall not be used by the lessee or permittee in such manner as to deprive any real property not owned by such lessee or permittee of its easements of light, air, and access. (Dec. 20, 1944, 58 Stat. 819, ch. 611, § 1; July 2, 1958, 72 Stat. 292, Pub. L. 85-491, §§ 1, 2; Aug. 21, 1959, 73 Stat. 414, Pub. L. 86-178, § 2; Sept. 13, 1960, 74 Stat. 881, Pub. L. 86-743, § 1; 1973 Ed., § 1-244; Apr. 7,

1977, D.C. Law 1-109, § 2, 23 DCR 8739; Mar. 6, 1979, D.C. Law 2-153, § 5, 25 DCR 6960; June 14, 1980, D.C. Law 3-70, § 7(b), 27 DCR 1776; July 1, 1980, D.C. Law 3-75, § 3, 27 DCR 2277; Oct. 8, 1981, D.C. Law 4-34, § 29(d), 28 DCR 3271; Mar. 10, 1983, D.C. Law 4-201, § 707, 30 DCR 148; Mar. 7, 1991, D.C. Law 8-227, § 2, 38 DCR 224; July 23, 1994, D.C. Law 10-140, § 2, 41 DCR 3053; Apr. 12, 1997, D.C. Law 11-259, § 302, 44 DCR 1423.)

Cross references. — As to Mayor's authority to pay honorariums to various board members and commissioners, see §§ 1-348 to 1-353.

As to regulation of home improvement businesses, see Chapter 5 of Title 2.

As to bonding of collection agencies, see § 47-2844(c).

Section references. — This section is referred to in §§ 1-343, 1-349, 2-502, 4-171, 7-1001, 40-1103, and 47-2844.

Effect of amendments. — Section 302 of D.C. Law 11-259 rewrote the section heading, substituted "Except as otherwise provided, the Mayor" for "The Mayor" in (e), substituted "Director of the Office of Contracting and Procurement" for "Mayor of the District of Columbia" in (j) and (k)(1), and repealed (k)(2).

Legislative history of Law 1-109. — Law 1-109 was introduced in Council and assigned Bill No. 1-339, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-153. — Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-319 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70 was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-75. — Law 3-75 was introduced in Council and assigned Bill No. 3-253, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 22, 1980 and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-184 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-34. — Law 4-34 was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-201. — Law 4-201 was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 28, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-227. — Law 8-227 was introduced in Council and assigned Bill No. 8-480, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-310 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-140. — Law 10-140, the "Bond Surety Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-358, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-245 and transmitted to both Houses of Congress for its review. D.C. Law 10-140 became effective on July 23, 1994.

Legislative history of Law 11-259. — See note to § 1-336.

References in text. — "Section 8 of Title 6, United States Code," referred to in (b)(3), was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1979: The "District of Columbia Electrical Licensing and Bonding Regulations Amendment Act of 1979" (D.C. Law 3-12, July 12, 1979, 25 DCR 10258).

Delegation of authority. — See Mayor's Order 90-68, April 30, 1990.

Delegation of contracting authority. — See Mayor's Order 90-178, November 19, 1990.

See Mayor's Order 92-153, December 1, 1992.

Delegation of authority under D.C. Law 8-227, the "Sale of Government Publications Amendment Act of 1990." — See Mayor's Order 91-98, June 5, 1991.

See Mayor's Order 91-187, November 25, 1991.

Delegation of authority under D.C. Law 8-227, the "Sale of Government Publications Amendment Act of 1990." — See Mayor's Order 93-199, November 19, 1993.

Delegation of authority under D.C. Law 8-227, the "Sale of Government Publications Amendment Act of 1990." — See Mayor's Order 94-236, November 9, 1994 (41 DCR 7593).

Delegation of authority under D.C. Law 8-227, the "Sale of Government Publications Amendment Act of 1990." — See Mayor's Order 96-40, March 18, 1996 (43 DCR 1801).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 96-83, June 20, 1996 (43 DCR 3510).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 96-136, September 9, 1996 (43 DCR 5043).

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority. — See Mayor's Order 96-152, October 17, 1996 (43 DCR 5855).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (11, 12, 13, 14, 15) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of

Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Insurance Department were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Designation of Mary Terrell — Arthur Elmes Parks. — See Act of March 5, 1981, D.C. Law 3-151, 27 DCR 4905.

Designation of Blues Alley. — See Act of March 5, 1981, D.C. Law 3-165, 27 DCR 5230.

Designation of Walter Houp Court. — See Act of March 5, 1981, D.C. Law 3-168, 27 DCR 5365.

Designation of Community Park West. — See Act of December 10, 1981, D.C. Law 4-56, 28 DCR 4650.

Designation of Ward Court. — See Act of March 9, 1983, D.C. Law 4-168, 29 DCR 4987.

Designation of Anna J. Cooper Circle. — See Act of March 9, 1983, D.C. Law 4-175, 29 DCR 5760.

Designation of Windom Place, Northwest. — See Act of March 10, 1983, D.C. Law 4-192, 30 DCR 43.

Designation of Charles Richard Drew Bridge. — See Act of May 3, 1983, D.C. Law 5-2, 30 DCR 1230.

Cited in *Bolten v. Clarke*, App. D.C., 125 A.2d 60 (1956); *Electrical Contractors Ass'n v. McLaughlin*, 153 F. Supp. 653 (D.D.C. 1957).

§ 1-338. Subpoena power.

(a) The Mayor of the District of Columbia shall have the power to issue subpoenas to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents in any investigation or examination of any municipal matter with respect to functions transferred to the Mayor by Reorganization Plan No. 3 of 1967 or by the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, § 1-201 et seq.): Provided, that witnesses other than those employed by the District of Columbia subpoenaed to appear before the Mayor shall be entitled to reasonable fees as established by regulations issued by the Mayor of the District of Columbia, but said fees need not be tendered said witnesses in advance of their

appearing and testifying and/or producing books, records, papers, or documents.

(b) Any willful false swearing on the part of any witness before the Mayor of the District of Columbia as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense.

(c) If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued pursuant to subsection (a) of this section, then, in that event, the Mayor of the District of Columbia may report that fact to the Superior Court of the District of Columbia or one of the judges thereof and said Court, or any judge thereof, is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that Court.

(d) The Mayor of the District of Columbia is authorized to administer oaths to witnesses summoned in any investigation or examination as set out in subsection (a) of this section. (Sept. 26, 1980, D.C. Law 3-109, § 3, 27 DCR 3785; Apr. 30, 1988, D.C. Law 7-104, § 33, 35 DCR 147.)

Section references. — This section is referred to in §§ 1-337, 1-343, 36-1308, 42-230, and 47-1525.

Legislative history of Law 3-109. — Law 3-109 was introduced in Council and assigned Bill No. 3-291, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 15, 1980 and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-234 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Delegation of subpoena power. — See Mayor's Order 88-31, February 11, 1988.

Delegation of authority to the Inspector General to issue subpoenas & to administer oaths in any investigation or examination of municipal matters. — See Mayor's Order 90-146, October 31, 1990.

Delegation of Subpoena Power to Implement the Parental Leave Act of 1994. — See Mayor's Order 97-137, August 1, 1997 (44 DCR 4551).

§ 1-338.1. Administration of oaths.

The Mayor of the District of Columbia, the Chairman of the Council of the District of Columbia, and the members of the Council of the District of Columbia may administer oaths as part of their official responsibilities. No fee shall be collected for the administration of such oaths, and the power to administer such oaths shall not be utilized for personal purposes. (May 19, 1982, D.C. Law 4-108, § 2, 29 DCR 1413.)

Cross references. — As to power of Council to investigate, issue subpoenas, and administer oaths, see § 1-234.

Section references. — This section is referred to in §§ 1-337 and 1-343.

Legislative history of Law 4-108. — Law 4-108, the "District of Columbia Administration of Oaths, Public Assistance Technical Clarification, and Police Service and Fire Service Sched-

ule Approval Act of 1982," was introduced in Council and assigned Bill No. 4-397, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 23, 1982 and March 9, 1982, respectively. Signed by the Mayor on March 26, 1982, it was assigned Act No. 4-169 and transmitted to both Houses of Congress for its review.

§ 1-339. Appointment of contracting officers; powers; approval of contracts over \$3,000; void contracts; liquidated damage contracts.

Repealed.

(Dec. 20, 1944, 58 Stat. 821, ch. 611, § 2; Aug. 16, 1949, 63 Stat. 607, ch. 438; 1973 Ed., § 1-245; April 12, 1997, D.C. Law 11-259, § 404, 44 DCR 1423.)

Legislative history of Law 11-259. — See note to § 1-336.

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services. — See Mayor's Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor's Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator. — See Mayor's Order 97-6, January 9, 1997 (44 DCR 357).

§ 1-340. Powers and duties of Director of the Department of Licenses, Investigation and Inspections; delegation of authority.

The Mayor of the District of Columbia may transfer to, impose upon, and vest in the Director of the Department of Licenses, Investigation and Inspections of the District of Columbia all or any of the duties imposed upon, and all or any of the powers, rights, and authority vested in, the Inspector of Buildings of the District of Columbia, the Inspector of Plumbing of the District of Columbia, and the Electrical Engineer of the District of Columbia, by any law, and the Mayor may authorize the said Director of the Department of Licenses, Investigation and Inspections to delegate any or all of such powers to the Chief Engineer of the District of Columbia and to the Chief of Inspection of the District of Columbia and to their respective deputies when acting for them. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3; 1973 Ed., § 1-246.)

Cross references. — As to authority over construction and repairs of school buildings, see § 31-202.

Section references. — This section is referred to in §§ 1-337 and 1-343.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Inspections abolished. — The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization,

and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the

named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

§ 1-341. Inspector of Asphalts and Cements; limitation upon compensation and services.

The Inspector of Asphalts and Cements shall not receive or accept compensation of any kind from or perform any work or render any services of a character required of him officially by the District of Columbia to any person, firm, corporation, or municipality other than the District of Columbia. (Sept. 1, 1916, 39 Stat. 679, ch. 433; 1973 Ed., § 1-307.)

§ 1-342. Settlement for real estate acquired by purchase or condemnation.

The Mayor of the District of Columbia may, in his discretion and when he deems such action to be in the public interest, effect settlement with owners of real estate authorized to be acquired by purchase or condemnation for District of Columbia purposes, through such title company or companies in the District of Columbia as may be designated by the Mayor, and to pay from appropriations available for the acquisition of such real estate reasonable fees to cover the cost of the services rendered by such title company or companies. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6; 1973 Ed., § 1-248.)

Section references. — This section is referred to in §§ 1-337 and 1-343.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-343. Power conferred by §§ 1-337 to 1-340 and 1-342 as additional.

The power and authorities conferred by §§ 1-337 to 1-340 and 1-342 are to be construed as in addition to and not by way of limitation of the powers now vested by law in the Mayor of the District of Columbia. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6; 1973 Ed., § 1-249.)

Section references. — This section is referred to in § 1-337.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-344. Use of exchange allowances or sale proceeds to purchase similar items.

In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the Director of the Office of Contracting and Procurement or his duly authorized representatives may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor. (June 30, 1945, 59 Stat. 293, ch. 209, § 7; July 9, 1946, 60 Stat. 532, ch. 544, § 7; 1973 Ed., § 1-250; Apr. 12, 1997, D.C. Law 11-259, § 303, 44 DCR 1423.)

Cross references. — As to authority of Mayor to exchange equipment when new equipment is purchased, see § 1-1124.

Effect of amendments. — Section 303 of D.C. Law 11-259 substituted "Director of the

Office of Contracting and Procurement" for "Mayor of the District of Columbia."

Legislative history of Law 11-259. — See note to § 1-336.

§ 1-345. Authority to grant additional compensation.

Authority is hereby granted to the Secretary of the Interior and the President of the United States, in their discretion, to grant additional compensation at rates not to exceed those prevailing without regard to the provisions of §§ 1341, 1342 and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code, additional compensation at rates not to exceed those prevailing in the District of Columbia for similar or comparable employment to each employee in or under the National Capital Parks and the Executive Mansion Grounds, whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code relating to the classification of government employees and related matters, or

whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1952. (Oct. 25, 1951, 65 Stat. 637, ch. 560, § 2; 1973 Ed., § 1-251; Mar. 3, 1979, D.C. Law 2-139, § 3205(aaa), 25 DCR 5740.)

Cross references. — As to the effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22,

1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — “§§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code”, referred to in this section, was substituted for “§ 3679 of the Revised Statutes, as amended (31 U.S.C. § 665)” on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

§ 1-346. Authority to fix certain licensing and registration fees.

The Mayor of the District of Columbia is authorized and empowered to fix from time to time, in accordance with § 1-347, the fees authorized to be charged by §§ 2-223, 2-411, 2-919, 2-1214, 2-1215, 2-1224, 2-1227, 2-1228, 2-1305, 2-1320, 2-1701.4, 2-1701.6, 2-1701.8, 2-1814, 2-1818, 2-2105, 2-2209, 2-2210, 2-2313, 2-2404, 47-2712, 47-2718 and 47-2843. (June 5, 1953, 67 Stat. 43, ch. 101, § 1; 1973 Ed., § 1-252; Mar. 10, 1983, D.C. Law 4-209, § 35(c), 30 DCR 390; June 22, 1983, D.C. Law 5-14, § 206(b), 30 DCR 2632.)

Cross references. — As to authority of Boxing and Wrestling Commission to fix fees for permits and licenses, see § 2-606.

As to schedule of electrical fees, see § 47-2712.

As to fees for public space permits, see § 47-2718.

Section references. — This section is referred to in § 1-347.

Legislative history of Law 4-209. — Law 4-209 was introduced in Council and assigned Bill No. 4-230, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned

Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983, and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

References in text. — Section 2-223 was repealed by D.C. Law 9-184, § 604, 39 DCR 8208, effective March 13, 1992.

Sections 2-411 and 2-919 were repealed by D.C. Law 9-245, § 38, 40 DCR 660, effective March 17, 1993.

Sections 2-1214 — 2-1228, 2-1305, 2-1320, 2-1701.4 — 2-1701.8, 2-1814, 2-1818, 2-2209 and 2-2210, were repealed by D.C. Law 6-99, § 1104, effective March 26, 1986.

Section 47-2843 was repealed by D.C. Law 5-84, § 22(a), effective May 22, 1984.

Mayor authorized to issue rules. — See note to § 1-801.

§ 1-347. Increase or decrease of fees authorized in § 1-346.

The Mayor of the District of Columbia may after public hearing increase or decrease the fees authorized to be charged by each of the sections listed in § 1-346 to such amounts as may, in the judgment of the Mayor, be reasonably necessary to defray the approximate cost of administering each of said

sections. (June 5, 1953, 67 Stat. 43, ch. 101, § 2; 1973 Ed., § 1-253; June 22, 1983, D.C. Law 5-14, § 206(c), 30 DCR 2632.)

Cross references. — As to schedule of electrical fees, see § 47-2712.

As to fees for public space permits, see § 47-2718.

Section references. — This section is referred to in § 1-346.

Legislative history of Law 5-14. — See note to § 1-346.

Mayor authorized to issue rules. — See note to § 1-801.

§ 1-348. Mayor's authority to determine honorariums; deposit of funds in Treasury; receipt of honorarium without prejudice to retirement compensation; "honorarium" defined.

(a) Notwithstanding the provisions set forth in the sections mentioned in § 1-349, the Mayor of the District of Columbia is authorized and empowered to determine from time to time the honorariums to be paid to the members of the boards, commissions, and committees appointed and established by authority of such sections, such authority to include the power to determine the total amount per annum of any such honorarium.

(b) The funds derived from fees and charges for examinations, licenses, certificates, registrations, or for any other service rendered by any such board, commission, or committee, remaining after the payment, or provision made for payment of all obligations of the respective boards, commissions, and committees outstanding as of June 30, 1954, shall be deposited in the Treasury to the credit of the District of Columbia and on and after July 14, 1956, all moneys collected for such fees and charges shall be paid into the Treasury to the credit of the District of Columbia.

(c) Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of any such board, commission or committee may receive his honorarium as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia government.

(d) As used in §§ 1-348 to 1-353, "honorarium" means the fee, per diem, compensation, or any amount paid to any member of any such board, commission, or committee for service as such member. Payments made under §§ 1-348 to 1-353 shall be governed by the provisions of § 1-612.8. (July 14, 1956, 70 Stat. 532, ch. 590, § 1; 1973 Ed., § 1-254; Mar. 3, 1979, D.C. Law 2-139, § 3205(oo), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-349, 1-352, and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-345.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-349. Applicability of §§ 1-348 to 1-353.

Sections 1-348 to 1-353 shall apply to the boards, commissions, and committees and the members thereof, respectively, established pursuant to the following sections: 1-337, 2-201 to 2-231, 2-401 to 2-419, 2-901 to 2-928, 2-1201 to 2-1232, 2-1301 to 2-1343, 2-1701.1 to 2-1701.10, 2-1801 to 2-1822, 2-2101 to 2-2108, 2-2201 to 2-2219, 2-2301 to 2-2318, 2-2401 to 2-2407, 45-1921 to 45-1951, and 47-2801 to 47-2849. (July 14, 1956, 70 Stat. 533, ch. 590, § 2; 1973 Ed., § 1-255; Mar. 10, 1983, D.C. Law 4-209, § 35(d), 30 DCR 390.)

Section references. — This section is referred to in §§ 1-348, and 1-350 to 1-353.

Legislative history of Law 4-209. — See note to § 1-346.

References in text. — Sections 2-201 through 2-231 were repealed by D.C. Law 9-184, § 604, 39 DCR 8208, effective March 13, 1992.

Sections 2-401 to 2-419 and 2-901 to 2-928 were repealed by D.C. Law 9-245, § 38, 40 DCR 660, effective March 17, 1993.

Sections 2-2101, 2-2305 through 2-2307, and

2-2402 have been omitted at the direction of the District of Columbia Codification Council.

Sections 2-1201 to 2-1232, 2-1301 to 2-1343, 2-1701.1 to 2-1701.10, 2-1801 to 2-1822 and 2-2201 to 2-2219 were repealed by D.C. Law 6-99, § 1104, effective March 26, 1986.

Sections 47-2801 through 47-2805 were repealed by D.C. Law 12-86, § 101(c), 45 DCR 1172, effective April 29, 1998.

Sections 2-2101 to 2-2108 and 2-2401 to 2-2408, referred to in this section, were repealed April 17, 1999.

§ 1-350. Refund of unearned fees.

Any fee or charge paid for an examination, license, certificate, or registration pursuant to any sections mentioned in § 1-349 shall, if not earned, be refunded upon application therefor: Provided, that application for refund is made not later than the end of the 3rd fiscal year following the fiscal year in which such fee or charge was made. (July 14, 1956, 70 Stat. 534, ch. 590, § 3; 1973 Ed., § 1-256.)

Section references. — This section is referred to in §§ 1-348, 1-349, and 1-352.

§ 1-351. Authority to fix and change licensing periods; proration of fee.

The Mayor of the District of Columbia is authorized, after a public hearing, to fix and change from time to time the period for which any license, certificate, or registration authorized by any section set forth in § 1-349 may be issued. Upon change of a license, certificate or registration period, the fee for any such license, certificate, or registration shall be prorated on the basis of the time covered. (July 14, 1956, 70 Stat. 534, ch. 590, § 4; 1973 Ed., § 1-257; Apr. 18, 1978, D.C. Law 2-72, § 2, 24 DCR 7065.)

Section references. — This section is referred to in §§ 1-348, 1-349, and 1-352.

Legislative history of Law 2-72. — Law 2-72 was introduced in Council and assigned Bill No. 2-204, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on January 10, 1978 and January 24, 1978, respectively. Approved without the signature of the Mayor on February 9, 1978, it was assigned Act No. 2-148 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(16)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-352. References to boards, commissions, and committees mentioned in §§ 1-348 to 1-353.

Whenever any board, commission, or committee, other than the Mayor of the District of Columbia, is mentioned in §§ 1-348 to 1-353, such board, commission, or committee shall be deemed to be the board, commission, or committee or other agency succeeding to the functions of the board, commission, or committee, so mentioned, pursuant to Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 5; 1973 Ed., § 1-258.)

Section references. — This section is referred to in §§ 1-348 and 1-349.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-353. Appropriation for administration of sections mentioned in § 1-349.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering the sections listed in § 1-349, including the expenses of the Department of Licenses, Investigation and Inspections, established pursuant to authority contained in Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 6; 1973 Ed., § 1-259.)

Section references. — This section is referred to in §§ 1-348, 1-349, and 1-352.

Transfer of functions. — Functions vested in the Department of Occupations and Profes-

sions by Reorganization Order No. 59, dated June 30, 1953, were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order 78-42, dated February 17, 1978, which Order estab-

lished the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

§ 1-354. Authority for transporting children of certain employees in District-owned vehicles.

The Mayor of the District of Columbia is authorized to utilize District-owned vehicles for transportation of children of employees of the District of Columbia government residing at Children's Center between Children's Center and Laurel, Maryland. (Aug. 18, 1958, 72 Stat. 618, Pub. L. 85-670, § 1; 1973 Ed., § 1-261.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-355. Reception of eminent persons; appropriation authorized.

(a) There is authorized to be appropriated an amount not to exceed \$25,000 in any fiscal year for expenses as the Mayor of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment (including ceremonial gifts) of officials of foreign, state, local, or federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia, or for the reception or entertainment of officials of foreign, state, local, or federal governments when the Mayor is visiting any other jurisdiction in his or her official capacity.

(b) There is authorized to be appropriated an amount not to exceed \$25,000 in any fiscal year for expenses as the Council of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment (including ceremonial gifts) of officials of foreign, state, local, or federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia, or for the reception or entertainment of officials of foreign, state, local, or federal governments when any Councilmember is visiting any other jurisdiction in his or her official capacity.

(c) For purposes of this section, the term "dignitary" or "eminent person" means a person other than a government official, who is of high rank or attainment in his or her occupation or who has performed extraordinary

service to, or has significantly contributed to the welfare of, the citizens of the District of Columbia.

(d) Any amounts appropriated for expenses under this section shall be subject to audit and accounted for in the same manner as any other District of Columbia government funds used for governmental purposes.

(e) The Secretary of the District of Columbia and the Secretary to the Council of the District of Columbia shall issue annual reports, which shall be made available to the public and which shall include an itemization of each disbursement under this section by the Mayor of the District of Columbia and by the Council of the District of Columbia, respectively. Records of disbursements under this section shall be retained for not less than 5 years. (July 11, 1947, 61 Stat. 314, ch. 231, § 1; 1973 Ed., § 1-262; Mar. 3, 1979, D.C. Law 2-139, § 3205(b), 25 DCR 5740; Dec. 16, 1987, D.C. Law 7-58, § 2, 34 DCR 7083; Feb. 20, 1988, D.C. Law 7-80, § 2, 34 DCR 7960.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-345.

Legislative history of Law 7-58. — Law 7-58 was introduced in Council and assigned Bill No. 7-307. The Bill was adopted on first and second readings on September 29, 1987 and October 13, 1987, respectively. Signed by the Mayor on October 26, 1987, it was assigned Act

No. 7-91 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-80. — Law 7-80 was introduced in Council and assigned Bill No. 7-301, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 1, 1987, it was assigned Act No. 7-115 and transmitted to both Houses of Congress for its review.

§ 1-356. Expenditures.

(a) The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Chief Judge of the District of Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the Executive Officer of the District of Columbia Court System, the Superintendent of Schools, the City Administrator, the Director of the District of Columbia Public Library, and the Chief Executive Officer of the University of the District of Columbia are authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section.

(b) At the end of each fiscal year, each official authorized to expend appropriations under this section shall provide an itemized accounting of these appropriations, which shall include the purposes for which all expenditures are made, in the form of an annual report, for presentation to the Mayor and the Council, and which shall be made available for public inspection. (1973 Ed., § 1-262a; Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 26; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462; Oct. 24, 1981, D.C. Law 4-46, § 2, 28 DCR 4271; Jan. 26, 1982, D.C. Law 4-61, § 7, 28 DCR 4771; Feb. 20, 1988, D.C. Law 7-80, § 3, 34 DCR 7960.)

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-46. — Law 4-46 was introduced in Council and assigned Bill No. 4-202, which was referred to the Committee on Human Services. The Bill was adopted on first, first amended and second readings on June 16, 1981, June 30, 1981 and July 14, 1981, respectively. Signed by the

Mayor on August 6, 1981, it was assigned Act No. 4-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-61. — Law 4-61 was introduced in Council and assigned Bill No. 4-264, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 15, 1981 and September 29, 1981, respectively. Signed by the Mayor on October 30, 1981, it was assigned Act No. 4-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-80. — See note to § 1-355.

§ 1-357. Imposition of fee for delivery of bad check in payment of obligation due District of Columbia; amount of fee; manner of collection; exception.

(a) The Mayor of the District of Columbia shall prescribe and impose, in addition to any other penalties provided by law, a fee to be paid by each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid. The amount of the fee shall be prescribed from time to time by the Mayor and shall be based on the approximate cost to the District of Columbia of handling dishonored or unpaid checks and collecting the amounts they represent. The fee shall be collected in the same manner as the original obligation. Any receipt previously given in reliance upon such check shall be void, and no other receipt shall be given for the payment of the original amount due until the fee has also been paid. This section shall not apply to a check which is not paid because of the death of its drawer. The Mayor may issue rules and regulations necessary to carry out this section.

(b) Until such fee is prescribed by the Mayor pursuant to subsection (a) of this section, a fee in the amount of \$15 shall be imposed by the Mayor upon each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid.

(c) In addition to any other penalties prescribed by law, the Mayor may contract for the collection of the amount represented by any dishonored or unpaid check that is given, or caused to be given, to the Mayor in payment of any liability or obligation owed to the District of Columbia government.

(d) In addition to the dishonored check fee provided for in subsection (b) of this section when collection of a dishonored or unpaid check is made pursuant to a contract authorized by subsection (c) of this section, the Mayor shall collect any costs or expenses incurred to recover and collect the amount represented by a dishonored or unpaid check from any such person who gives, or causes to be given, in payment of any obligation or liability due the District of Columbia

government a check which is subsequently dishonored or not duly paid. In cases where collection is made by action at law or suit in equity, such costs and expenses shall include litigation expenses and attorneys fees.

(e) The Corporation Counsel is authorized to institute actions at law or in equity for the recovery of all amounts owed to the District as set forth in subsection (d) of this section, including the Corporation Counsel's own litigation expenses and attorneys fees. In the event the Corporation Counsel elects not to exercise his or her authority under this subsection, any person who, or entity that, renders the collection services provided for in subsection (c) of this section shall have the authority to institute actions at law or suits in equity for the recovery of the amounts represented by any dishonored or unpaid check, in addition to any amounts charged by the collector for collecting a dishonored or unpaid check and any litigation expenses and attorneys fees incurred by the collector for such collection.

(f) Notwithstanding the Mayor entering into a collection contract pursuant to subsection (c) of this section, the Mayor retains exclusive authority with respect to all District obligations and liabilities, including, but not limited to, the authority to resolve a dispute, comprise a claim, end collection activity, or establish a schedule of fees and expenses. (Sept. 28, 1965, 79 Stat. 844, Pub. L. 89-208, § 1; 1973 Ed., § 1-264; July 18, 1981, D.C. Law 4-16, § 2, 28 DCR 2365; Nov. 19, 1997, 111 Stat. 2186, Pub. L. 105-100, § 157(b); Mar. 20, 1998, D.C. Law 12-60, § 1501, 44 DCR 7378.)

Section references. — This section is referred to in § 46-115.

Effect of amendments. — D.C. Law 12-60 added (c), (d), (e), and (f).

Section 157(b) of Pub. L. 105-100, 111 Stat. 2186, in (a), inserted a new fourth sentence; and added (c), (d), and (e).

Neither D.C. Law 12-60 nor Pub. L. 105-100 referred to the other, and effect has been given to D.C. Law 12-60.

Temporary amendment of section. — Section 1501 of D.C. Law 12-59 added (c), (d), (e), and (f).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary amendment of section, see § 1501 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1501 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 4-16. — Law 4-16 was introduced in Council and assigned Bill No. 4-126, which was referred to the Com-

mittee on Finance and Revenue. The Bill was adopted on first and second readings on April 7, 1981 and May 5, 1981, respectively. Signed by the Mayor on May 21, 1981, it was assigned Act No. 4-31 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 1-358. District of Columbia student loan insurance program.

(a) The government of the District of Columbia is authorized:

(1) To establish a student loan insurance program which meets the requirements of this part for a State loan insurance program in order to enter into agreements with the Commissioner for the purposes of this title;

(2) To enter into such agreements with the Commissioner;

(3) To use amounts appropriated for the purposes of this section to establish a fund for such purposes and for expenses in connection therewith;

(4) To accept and use donations for the purposes of this section; and

(5) To establish a student loan program for District of Columbia residents which shall be funded in whole or in part through the proceeds of Industrial Revenue Bonds and to enter into agreements with other entities for the purpose of managing, regulating, and overseeing such a program.

(b) Notwithstanding the provisions of any applicable law, if the borrower, on any loan insured under the program established pursuant to this section, is a minor, any otherwise valid note or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

(c) There are authorized to be appropriated such amounts as may be necessary for the purposes of this section. (Nov. 8, 1965, Pub. L. 89-329, title IV, § 436; Nov. 3, 1966, 80 Stat. 1244, Pub. L. 89-572, § 12; Oct. 16, 1968, 82 Stat. 1024, Pub. L. 90-575, title I, § 116(b)(5); 1973 Ed., § 1-265; Oct. 12, 1976, 90 Stat. 2132, Pub. L. 94-482, title I, § 127(a); Nov. 19, 1985, D.C. Law 6-58, § 2, 32 DCR 5725.)

Legislative history of Law 6-58. — Law 6-58 was introduced in Council and assigned Bill No. 6-247, which was referred to the Committee on Education. The Bill was adopted on first and second readings on July 9, 1985 and September 10, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-81 and transmitted to both Houses of Congress for its review.

References in text. — In subsection (a), the words “this part” refer to Part B of Title IV of the Higher Education Act of 1965, as amended, which is classified to 20 U.S.C. § 1070 et seq.

In subsection (a), the words “this title” refer to Title IV of the Higher Education Act of 1965, as amended, which is classified to 20 U.S.C. § 1070 et seq.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-359. District of Columbia medical assistance program.

(a) The Mayor of the District of Columbia (hereafter in this section and § 1-360 referred to as the “Mayor”) may submit under Title XIX of the Social Security Act to the Secretary of Health and Human Services (hereafter in this section and § 1-360 referred to as the “Secretary”) a plan for medical

assistance (and any modifications of such plan) to enable the District of Columbia to receive federal financial assistance under such title for a medical assistance program established by the Mayor under such plan.

(b)(1) Notwithstanding any other provision of law, the Mayor may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Mayor may not (except to the extent required by Title XIX of the Social Security Act):

(A) Prescribe maximum income levels for recipients of medical assistance under such plan which exceed:

(i) The Title XIX maximum income levels if such levels are in effect; or

(ii) The Mayor's maximum income levels for the local medical assistance program if there are no Title XIX maximum income levels in effect; or

(B) Prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under Title XIX of the Social Security Act and under the plan of the State of Virginia approved under such title.

(2) For purposes of subparagraph (A) of paragraph (1) of this subsection:

(A) The term "Title XIX maximum income levels" means any maximum income levels which may be specified by Title XIX of the Social Security Act for recipients of medical assistance under state plans approved under that title;

(B) The term "the Mayor's maximum income levels for the local medical assistance program" means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

(C) During any of the first 4 calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no Title XIX maximum income levels in effect if the Title XIX maximum income levels in effect during such quarter are higher than the Mayor's maximum income levels for the local medical assistance program.

(c) The District state plan required under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. 1396 et seq.), shall provide that all persons in the following categories are eligible for Medicaid benefits:

(1) A pregnant woman or an infant under 1 year of age with an income up to 185% of the federal poverty line, as authorized by § 1902(a)(1) of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. 1396a(a)(1));

(2) A child born after September 30, 1983, who has not attained the age of 8 years and whose family income is not more than 100% of the federal poverty line, as authorized by § 1902 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. 1396a); and

(3) A pregnant woman or a child during a presumptive eligibility period as authorized by § 1902(a) of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. 1396a(a)).

(d)(1) For purposes of this subsection, the term:

(A) "TANF-related Medicaid recipient" means a family that has dependent children under 21 years of age in the home and whose income is not low enough to qualify for financial assistance, but is low enough to qualify for medical assistance.

(B) "Health maintenance organization" means a public or private organization, operating in the District of Columbia, which contracts with the District government to provide comprehensive health maintenance, preventive and treatment services emphasizing access to primary care for enrolled members of the plan through its own network of physicians and hospitals for a fixed prepaid premium.

(C) "Managed care provider" means either a primary care provider or a health maintenance organization.

(D) "Primary care provider" means a physician, clinic, hospital, or neighborhood health center that is responsible for providing primary care and coordinating referrals, when necessary, to other health care providers.

(E) "Restricted recipient" means a person who has been restricted to one designated primary care provider for a minimum of one year after a finding of abuse or misuse of Medicaid services by the Commission on Health Care Financing.

(2) The Mayor shall establish a plan to mandate enrollment of TANF and TANF-related Medicaid recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

(A) TANF and TANF-related Medicaid recipients shall select any health maintenance organization with a current contract with the District of Columbia to provide managed care services to TANF and TANF-related Medicaid recipients on a capitated method of payment.

(i) Any health maintenance organization with a current contract with the District of Columbia to provide managed care services to TANF and TANF-related Medicaid recipients on a capitated method of payment; or

(ii) A primary care provider, who shall be reimbursed on a capitated basis;

(B) The Mayor shall exclude TANF and TANF-related Medicaid recipients from the managed care program who are:

(i) Residents in a nursing facility or intermediate care facility for the mentally retarded;

(ii) Repealed.

(iii) Eligible for Medicaid for a period that is less than 3 months;

(iv) Eligible for a period that is retroactive;

(v) Foster children residing outside the District of Columbia; or

(vi) Restricted recipients.

(C) The Mayor shall assign any TANF and TANF-related Medicaid recipient who does not choose a provider within a reasonable time to a health maintenance organization described in subparagraph (A) of this paragraph.

(i) A managed care provider as described in subparagraph (A)(i) of this paragraph; or

(ii) A managed care provider that is an employee or entity of the District government.

(D) Repealed.

(E) TANF and TANF-related Medicaid recipients enrolled in a managed care program shall be exempted from any additional co-payment requirements other than those imposed by the Medicaid program.

(F) The Mayor shall develop an education program to fully inform TANF and TANF-related Medicaid recipients about the various managed care programs to ensure better care for recipients while avoiding unnecessary and inappropriate use of hospital based services for preventive and primary care.

(3) In order to participate in the managed care plan, a provider must:

(A) Be a Medicaid qualified provider and be accessible to enrollees on a 24 hours per day, 7 days per week basis. The Mayor shall establish a monitoring system to ensure that recipients have 24 hours per day, 7 days per week access to their managed care providers and that treatment is provided in a timely manner; and

(B) Have a written contract with the District government which provides detailed information regarding the responsibilities of the managed care provider and the District government for providing or arranging for the provision of, and making payment for all services to which the TANF and TANF-related Medicaid recipient is entitled under the District state Medicaid plan.

(4) The Mayor shall maintain a grievance and appeal process for TANF and TANF-related Medicaid recipients enrolled in a managed care program.

(5) The Mayor shall require that managed care providers, which receive a capitated method of payment, submit adequate assurances to protect the District government against risk in case a provider becomes insolvent.

(6) To implement the requirements of this subsection the Mayor shall:

(A) Amend the District state Medicaid plan pursuant to § 3-204.5; and

(B) Seek and obtain all necessary waivers of federal Medicaid statutes, rules and regulations.

(7) The Mayor shall submit to the Council on an annual basis an assessment of the cost effectiveness of the managed care plan and its impact on the TANF and TANF-related Medicaid recipient's access to care of adequate quality. (Dec. 27, 1967, 81 Stat. 744, Pub. L. 90-227, § 1; 1973 Ed., § 1-266; May 15, 1990, D.C. Law 8-124, § 2, 37 DCR 2087; Mar. 17, 1993, D.C. Law 9-247, § 2, 40 DCR 1150; Nov. 25, 1993, D.C. Law 10-65, § 101, 40 DCR 7351; Sept. 26, 1995, D.C. Law 11-52, § 501, 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 102, 45 DCR 7193.)

Section references. — This section is referred to in § 3-701.

Effect of amendments. — D.C. Law 12-175, in (d), rewrote (2)(A) and (2)(C), repealed (2)(B)(ii) and (2)(D), and substituted "TANF-related Medicaid recipient" and "TANF and TANF-related Medicaid recipients" for "AFDC-related Medicaid recipient" and "AFDC and AFDC-related Medicaid recipients", respectively, throughout.

Temporary amendments of section. — Section 5 of D.C. Law 12-7 amended (d)(1)(A), the introductory language of (d)(2), and (d)(2)(A), (d)(2)(A)(i), the introductory language of (d)(2)(B), and (C), (d)(2)(D) through (F), and (d)(3)(B), (d)(4) and (7) to read as follows:

"(d)(1) For purposes of this subsection, the term:

"(A) "Medicaid Managed Care recipient" means a person who is eligible for the Medicaid

Managed Care Program under the District of Columbia state plan approved under title XIX of the Social Security Act, as in effect on July 16, 1996.

“(2) The Mayor shall establish a plan to mandate enrollment of Medicaid Managed Care recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

“(A) Medicaid Managed Care recipients shall select 1 of the following managed care providers:

“(i) Any health maintenance organization with a current contract with the District of Columbia to provide managed care services to Medicaid Managed Care recipients on a capitated method of payment; or

“(B) The Mayor shall exclude Medicaid Managed Care recipients from the managed care program who are:

“(C) The Mayor shall assign any Medicaid Managed Care recipient who does not choose a provider within a reasonable time to 1 of the following:

“(D) The enrollment period shall be 6 months. Medicaid Managed Care recipients may change managed care providers without cause within 30 days of enrolling with a managed care provider. However, after that 30-day period has expired, no recipient shall be permitted to change providers except for good cause.

“(E) Medicaid Managed Care recipients enrolled in a managed care program shall be exempted from any additional co-payment requirements other than those imposed by the Medicaid program.

“(F) The Mayor shall develop an education program to fully inform Medicaid Managed Care recipients about the various managed care programs to ensure better care for recipients while avoiding unnecessary and inappropriate use of hospital based services for preventive and primary care.

“(3) In order to participate in the managed care plan, a provider must:

“(B) Have a written contract with the District government which provides detailed information regarding the responsibilities of the

managed care provider and the District government for providing or arranging for the provision of, and making payment for all services to which the Medicaid Managed Care recipient is entitled under the District state Medicaid plan.

“(4) The Mayor shall maintain a grievance and appeal process for Medicaid Managed Care recipients enrolled in a managed care program.

“(7) The Mayor shall submit to the Council on an annual basis an assessment of the cost effectiveness of the managed care plan and its impact on the Medicaid Managed Care recipient's access to care of adequate quality.”

Section 7(b) of D.C. Law 12-7 provides that the act shall expire after 225 of its having taken effect.

Section 2 of D.C. Law 12-70 amended (d)(1) and (d)(2) to read as follows:

“(d)(1) For purposes of this subsection, the term:

“(A) “TANF-related Medicaid recipient” means a family that has dependent children under 21 years of age in the home and whose income is not low enough to qualify for medical assistance.

“(2) The Mayor shall establish a plan to mandate enrollment of AFDC and AFDC-related Medicaid recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

“(A) TANF and TANF-related Medicaid recipients shall select any health maintenance organization with a current contract with the District of Columbia to provide managed care services to TANF and TANF-related Medicaid recipients on a capitated method of payment.

“(B) The Mayor shall exclude AFDC and AFDC-related Medicaid recipients from the managed care program who are:

“(ii) Repealed.

“(C) The Mayor shall assign any TANF and TANF-related Medicaid recipient who does not choose a provider within a reasonable time to a health maintenance organization described in subparagraph (A) of this paragraph.

“(D) Repealed.”

Section 4(b) of D.C. Law 12-70 provides that the act shall expire after 225 days of its having taken effect.

Section 5 of D.C. Law 12-130 amended (d) to read as follows:

“(d)(1) For purposes of this subsection, the term:

“(A) “Medicaid Managed Care recipient” means a person who is eligible for the Medicaid Managed Care Program under the District of Columbia state plan approved under title XIX of the Social Security Act, as in effect on July 16, 1996.

“(2) The Mayor shall establish a plan to mandate enrollment of Medicaid Managed Care recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

“(A) Medicaid Managed Care recipients shall select one of the following managed care providers:

“(i) Any health maintenance organization with a current contract with the District of Columbia to provide managed care services to Medicaid Managed Care recipients on a capitated method of payment; or

“(B) The Mayor shall exclude Medicaid Managed Care recipients from the managed care program who are:

“(C) The Mayor shall assign any Medicaid Managed Care recipient who does not choose a provider within a reasonable time to one of the following:

“(D) The enrollment period shall be 6 months. Medicaid Managed Care recipients may change managed care providers without cause within 30 days of enrolling with a managed care provider. However, after that 30-day period has expired, no recipient shall be permitted to change providers except for good cause.

“(E) Medicaid Managed Care recipients enrolled in a managed care program shall be exempted from any additional co-payment requirements other than those imposed by the Medicaid program.

“(F) The Mayor shall develop an education program to fully inform Medicaid Managed Care recipients about the various managed care programs to ensure better care for recipients while avoiding unnecessary and inappropriate use of hospital based services for preventive and primary care.

“(3) In order to participate in the managed care plan, a provider must:

“(B) Have a written contract with the District government which provides detailed information regarding the responsibilities of the managed care provider and the District government for providing or arranging for the provision of, and making payment for all services to which the Medicaid Managed Care recipient is entitled under the District state Medicaid plan.

“(4) The Mayor shall maintain a grievance and appeal process for Medicaid Managed Care recipients enrolled in a managed care program.

“(7) The Mayor shall submit to the Council on an annual basis an assessment of the cost effectiveness of the managed care plan and its impact on the Medicaid Managed Care recipient's access to care of adequate quality.”

Section 7(b) of D.C. Law 12-130 provides that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-(D.C. Act 12-629) amended (d) to read as follows:

“(d)(1) For purposes of this subsection, the term:

“(A) “TANF and TANF-related Medicaid recipient” means a person who is eligible for the Medicaid Managed Care Program under the District of Columbia state plan approved under title XIX of the Social Security Act, as in effect on July 16, 1996.

“(2) The Mayor shall establish a plan to mandate enrollment of TANF and TANF-related Medicaid recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

“(A) TANF and TANF-related Medicaid recipients shall select one of the following managed care providers:

“(i) Any health maintenance organization with a current contract with the District of Columbia to provide managed care services to TANF and TANF-related Medicaid recipients on a capitated method of payment; or

“(B) The Mayor shall exclude TANF and TANF-related Medicaid recipients from the managed care program who are:

“(C) The Mayor shall assign any TANF and TANF-related Medicaid recipient who does not

choose a provider within a reasonable time to one of the following:

“(D) The enrollment period shall be 6 months. TANF and TANF-related Medicaid recipients may change managed care providers without cause within 30 days of enrolling with a managed care provider. However, after that 30-day period has expired, no recipient shall be permitted to change providers except for good cause.

“(E) TANF and TANF-related Medicaid recipients enrolled in a managed care program shall be exempted from any additional co-payment requirements other than those imposed by the Medicaid program.

“(F) The Mayor shall develop an education program to fully inform TANF and TANF-related Medicaid recipients about the various managed care programs to ensure better care for recipients while avoiding unnecessary and inappropriate use of hospital based services for preventive and primary care.

“(3) In order to participate in the managed care plan, a provider must:

“(B) Have a written contract with the District government which provides detailed information regarding the responsibilities of the managed care provider and the District government for providing or arranging for the provision of, and making payment for all services to which the TANF and TANF-related Medicaid recipient is entitled under the District state Medicaid plan.

“(4) The Mayor shall maintain a grievance and appeal process for TANF and TANF-related Medicaid recipients enrolled in a managed care program.

“(7) The Mayor shall submit to the Council on an annual basis an assessment of the cost effectiveness of the managed care plan and its impact on the TANF and TANF-related Medicaid recipient's access to care of adequate quality.”

Section 6(b) of D.C. Law 12-(D.C. Act 12-629) provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 5 of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 5 of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 5 of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

Section 7 of D.C. Act 12-306 provided for the application of the act.

For temporary amendment of section, see § 2 of the TANF and TANF-Related Medicaid Managed Care Program Emergency Amendment Act of 1997 (D.C. Act 12-197, December 2, 1997, 44 DCR 7484), § 2 of the TANF-Related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287), § 2 of the TANF and TANF-Related Medicaid Managed Care Program Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-501, November 10, 1998, 45 DCR 8123) and § 2 of the TANF and TANF-Related Medicaid Managed Care Program Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-5, February 8, 1999, 46 DCR 2294).

Section 4 of D.C. Act 12-501 provides for the application of the act.

Section 4 of D.C. Act 13-5 provides for the application of the act.

Legislative history of Law 8-124. — Law 8-124 was introduced in Council and assigned Bill No. 8-374, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-247. — Law 9-247, the “Medicaid Managed Care Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-425, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 8, 1993, it was assigned Act No. 9-392 and transmitted to both Houses of Congress for its review. D.C. Law 9-247 became effective on March 17, 1993.

Legislative history of Law 10-65. — Law 10-65, the “Omnibus Spending Reduction Act of 1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on

January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — See note to § 1-326.

Legislative history of Law 12-7. — Law 12-7, the “Public Assistance Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-102. The Bill was adopted on first and second readings on February 18, 1997, and May 6, 1997, respectively. Signed by the Mayor on March 20, 1997, it was assigned Act No. 12-79 and transmitted to both Houses of Congress for its review. D.C. Law 12-7 became effective on August 1, 1997.

Legislative history of Law 12-70. — Law 12-70, the “TANF and TANF-Related Medicaid Managed Care Program Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-441. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 11, 1997, it was assigned Act No. 12-219 and transmitted to both Houses of Congress for its review. D.C. Law 12-70 became effective on April 29, 1998.

Legislative history of Law 12-130. — Law 12-130, the “Public Assistance Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-574. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 17, 1998, it was assigned Act No. 12-329 and transmitted to both Houses of Congress for its review. D.C. Law 12-130 became effective on July 24, 1998.

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-277. — Law 12-277, the “TANF-Related Medicaid Managed Care Program Technical Clarification Temporary Amendment Act of 1999,” was introduced in Council and assigned Bill No. 12-900. The Bill was adopted on first and second readings

on December 15, 1999, and January 5, 1999, respectively. Signed by the Mayor on January 27, 1999, it was assigned Act No. 12-629 and transmitted to both Houses of Congress for its review. D.C. Law 12-277 became effective on April 27, 1999.

References in text. — “Title XIX of the Social Security Act,” referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

Mayor authorized to issue rules. — Section 3 of D.C. Law 9-247 provided that the Mayor shall issue rules necessary to implement subsection (d) of this section pursuant to subchapter I of Chapter 15 of Title 1.

Delegation of Authority under D.C. Law 9-247, the “Medicaid Managed Care Amendment Act of 1992.” — See Mayor’s Order 93-218, December 1, 1993.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Limitation on services provided under District Medicaid plan permitted. — Limiting podiatric services that podiatrists may provide under the District of Columbia Medicaid plan while permitting physicians to furnish a full range of podiatric care does not violate the Medicaid provisions of the Social Security Act or implementing regulations. *District of Columbia Podiatry Soc’y v. District of Columbia*, 407 F. Supp. 1259 (D.D.C. 1975).

Cited in *Pugh v. District of Columbia Dep’t of Human Resources*, App. D.C., 293 A.2d 490 (1972).

§ 1-359.1. Insurer obligations.

(a) No insurer may deny coverage or withhold payments under its plan for any enrollee, subscriber, policyholder, or certificateholder on the basis that such enrollee, subscriber, policyholder, or certificateholder is eligible for Medicaid pursuant to a Medicaid state plan adopted by the District of

Columbia or any other jurisdiction pursuant to § 1902 of the Social Security Act (79 Stat. 344; 42 U.S.C. § 1396a).

(b) No insurer may deny enrollment of a child under the health plan of the child's parent on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the parent's federal income tax return; or

(3) The child does not reside with the parent or in the insurer's service area.

(c) Where a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(2) Permit the custodial parent (or the provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the provider, or the District of Columbia Medicaid agency.

(d) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(1) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) Enroll the child under family coverage upon application by the child's other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Title IV-D of the Social Security Act (88 Stat. 2351; 42 U.S.C. §§ 652 through 669), if the employed parent is enrolled but fails to make application to obtain coverage of the child; and

(3) Not disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(e) An insurer may not impose requirements on a District of Columbia agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(f) For purposes of this section, the term "insurer" includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (100 Stat. 231; 29 U.S.C. § 1167(1)), a public or private organization which is a qualifying health maintenance organization under federal regulations, or a hospital and medical service plan as defined in § 35-1941(8). (Mar. 14, 1995, D.C. Law 10-202, § 2, 41 DCR 7704.)

Legislative history of Law 10-202. — Law 10-202, the “Medicaid Benefits Protection Act of 1994,” was introduced in Council and assigned Bill No. 10-584, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on October 4, 1994, and November 1, 1994, respectively. Signed by the Mayor on November 22, 1994, it was assigned Act No. 10-340 and transmitted to both Houses of Congress for its review. D.C. Law 10-202 became effective on March 14, 1995.

§ 1-359.2. Employer obligations.

Where a parent is required by a court or administrative order to provide health coverage, which is available through the parent’s employer, the employer shall:

(1) Permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment restrictions;

(2) Enroll the child under family coverage upon application by the child’s other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Title IV-D of the Social Security Act (88 Stat. 2351; 42 U.S.C. §§ 651 through 669), if the parent is enrolled but fails to make application to obtain coverage of the child;

(3) Not disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

(A) The court order is no longer in effect;

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(C) The employer has eliminated family health coverage for all its employees; and

(4) Withhold from the employee’s compensation the employee’s share (if any) of premiums for health coverage and to pay this amount to the insurer, except that the maximum amount so withheld may not exceed the maximum amount to be withheld under § 303(b) of the Consumer Credit Protection Act. (82 Stat. 163; 15 U.S.C. § 1673(b)). (Mar. 14, 1995, D.C. Law 10-202, § 3, 41 DCR 7704.)

Temporary amendment of section. — Section 2 of D.C. Law 12-103 amended (3)(C) and (4) and added (5) to read as follows:

“Where a parent is required by a court or administrative order to provide health coverage, which is available through the parent’s employer, the employer shall:

“(3) Not disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

“(C) The employer has eliminated family health coverage for all its employees;

“(4) Withhold from the employee’s compensation the employee’s share (if any) of premiums for health coverage and to pay this amount to the insurer, except that the maximum amount

so withheld may not exceed the maximum amount to be withheld under § 303(b) of the Consumer Credit Protection Act. (82 Stat. 163; 15 U.S.C. § 1673(b)); and

“(5) Inform the health insurance provider, upon receipt of notice from the Superior Court or the Mayor indicating that a court or administrative order has directed the parent to provide health insurance coverage for the child, that receipt of the notice by the employer operates to enroll the child in the health insurance plan, unless the parent contests the notice in accordance with rules adopted by the Mayor or the Superior Court.”

Section 16(b) of D.C. Law 12-103 provides that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-210 amended (3)(C) and (4), and added (5) to read as follows:

“Where a parent is required by a court or

administrative order to provide health coverage, which is available through the parent's employer, the employer shall:

"(3) Not disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

"(C) The employer has eliminated family health coverage for all its employees;

"(4) Withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer, except that the maximum amount so withheld may not exceed the maximum amount to be withheld under § 303(b) of the Consumer Credit Protection Act. (82 Stat. 163; 15 U.S.C. § 1673(b)); and

"(5) Inform the health insurance provider, upon receipt of notice indicating that a court or administrative order has directed the parent to provide health insurance coverage for the child, that receipt of the notice by the employer operates to enroll the child in the health insurance plan, unless the parent contests the notice in accordance with rules adopted by the Mayor or the Superior Court."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 2 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 2 of the Child Support

and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 2 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, November 2, 1998, 45 DCR 8495), and § 2 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 16 of D.C. Act 12-309 provided for the application of the act.

Section 13 of D.C. Act 12-439 provides for the application of the act.

Section 15 of D.C. Act 12-503 provides for the application of the act.

Legislative history of Law 10-202. — See note to § 1-359.1.

Legislative history of Law 12-103. — Law 12-103, the "Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-365, which was retained by Counsel. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 30, 1998, it was assigned Act No. 12-279 and transmitted to both Houses of Congress for its review. D.C. Law 12-103 became effective on May 8, 1998.

Legislative history of Law 12-210. — Law 12-210, the "Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-657. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-497 and transmitted to both Houses of Congress for its review. D.C. Law 12-210 became effective on April 13, 1999.

§ 1-359.3. Recoupment of amounts spent on child medical care.

(a) The Mayor may garnish wages, salary, or other employment income of, and intercept, in accordance with procedures set forth in § 47-1812.11, any amounts from District of Columbia tax payable to, any person who:

(1) Is required by court or administrative order to provide coverage of the cost of health services to a child who is eligible for Medicaid; and

(2) Has received payment from a third party for the costs of such services, but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services.

(b) A garnishment or tax intercept effectuated pursuant to subsection (a) of this section shall be effected only to the extent necessary to reimburse the District of Columbia Medicaid agency for its cost under the state plan, but

claims for current and past due child support shall take priority over these claims. (Mar. 14, 1995, D.C. Law 10-202, § 4, 41 DCR 7704.)

Legislative history of Law 10-202. — See note to § 1-359.1.

§ 1-360. Supplementary medical insurance program.

The Mayor may enter into an agreement (and any modifications of such agreement) with the Secretary under § 1843 of the Social Security Act pursuant to which:

(1) Eligible individuals (as defined in § 1836 of the Social Security Act) who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under Title XIX of the Social Security Act will be enrolled in the supplementary medical insurance program established under part B of Title XVIII of the Social Security Act; and

(2) Provisions will be made for payment of the monthly premiums of such individuals for such program. (Dec. 27, 1967, 81 Stat. 745, Pub. L. 90-227, § 2; 1973 Ed., § 1-267.)

Section references. — This section is referred to in § 1-359.

References in text. — Section 1843 of the Social Security Act, referred to in the introductory language, is set out as § 1395v of Title 42 of the United States Code.

Title XIX of the Social Security Act, referred to in (1), is set out as 42 U.S.C. § 1396 et seq.

Section 1836 of the Social Security Act, referred to in (1), is set out in § 1395o of Title 42 of the United States Code.

Part B of Title XVIII of the Social Security Act, referred to in (1), is set out as §§ 1395j to 1395w-4 of Title 42 of the United States Code.

Private Attorney Contract Authorization. — Title XIII of D.C. Law 12-175 authorized the District of Columbia to enter into contingent fee contracts for private attorney services in bringing Medicaid reimbursement litigation.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Doe v. Mathews*, 422 F. Supp. 141 (D.D.C. 1976).

§ 1-361. Duties of Corporation Counsel.

The Corporation Counsel shall be under the direction of the Mayor, and have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof. He shall furnish opinions in writing to the Mayor, whenever requested to do so. All requests for opinions shall be transmitted through the Mayor, and a record thereof kept, with the opinions, in the Office of the Executive Secretary of the Mayor. He shall perform such other professional duties as may be required of him by the Mayor. (Leg. Assem., Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch.

1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951; 1973 Ed., § 1-301.)

Cross references. — As to duty to enforce rules and regulations governing steam boilers, see § 1-1013.

As to prosecution of violations of regulatory laws relating to certified public accountants, see § 2-120.

As to duty to represent police officers in wrongful arrest actions, see § 4-143.

As to duty of prosecuting and enjoining violations of building and zoning regulations, see §§ 5-408 and 5-426.

As to duty to enforce laws concerning vital statistics, see § 6-204.

As to enforcement of laws concerning the manufacture, renovation, and sale of mattresses, see § 6-805.

As to duty to prosecute for failure to remove weeds, see § 6-1103.

As to the institution of proceedings to recover funds expended by Mayor to remove ice and snow, see § 7-906.

As to enforcement of laws concerning weights, measures, and markets, see § 10-136.

As to duty to furnish reports and information to Executive Officer of District of Columbia courts, see § 11-1731.

As to duties in intrafamily offense proceedings, see §§ 16-1002 to 16-1005.

As to juvenile proceedings concerning delinquency, need of supervision, or neglect, see §§ 16-2305, 16-2316 and 16-2327.

As to prosecutions for unlawful disclosure of juvenile records, see § 16-2336.

As to duty to prosecute support actions, see § 16-2341.

As to prosecutions for unlawful disclosure of paternity records, see § 16-2348.

As to power to institute quo warranto proceedings, see § 16-3522.

As to duty to conduct criminal prosecutions, see § 23-101.

As to prosecution of violations of Alcoholic Beverage Control Act, see § 25-132.

As to prosecution of violations of money lenders law, see § 26-707.

As to duty to represent Office of Consumer Protection, see § 28-3905.

As to representation of Superintendent of Insurance, see §§ 35-413, 35-610 and 35-615.

As to duty to examine articles of incorporation of domestic life insurance companies, see §§ 35-603 and 35-609.

As to prosecution of violations relating to employment of minors, see § 36-524.

As to prosecution of violations of motor vehicles registration law, see § 40-105.

As to prosecutions of violations of the motor vehicle lien law, see § 40-1015.

As to duty to represent Public Service Commission, see §§ 43-307 and 43-405.

As to prosecutions for refusal to produce books and papers in connection with personal property taxes, see §§ 47-1701 and 47-1705.

As to prosecution of violations of motor fuel tax law and the collection of taxes due thereunder, see § 47-2312.

As to prosecution of insurance companies for operating without license, see § 47-2605.

As to prosecution for holding public auction without permit, see § 47-2707.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Corporation Counsel abolished.

— The Office of the Corporation Counsel was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 50 of the Board of Commissioners, dated June 26, 1953, as amended, provided that the Office of the Corporation Counsel would be organized as previously constituted. The previously existing Office of the Corporation Counsel was abolished, and all functions and positions including the duties, powers, and authorities of all officers and employees of the former office were transferred to the new office. Authority to settle claims and suits against the District up to and including \$5,000 (or \$10,000 if approved by the Assistant Commissioner) was delegated to the Corporation Counsel by the Order. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The functions of the Employees Compensation Sub-Section, Investigation Section, Office of the Corporation Counsel, were transferred to the Personnel Office, Depart-

ment of General Administration by Reorganization Order No. 21 of the Board of Commissioners, dated November 20, 1952. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967.

Office of Secretary to Board of Commissioners abolished. — See note to § 1-303.

Corporation Counsel owes duty of care to public in general. — In rendering advice to the various departments of the District government, the Corporation Counsel owes a duty of care to the public in general and to potentially affected individuals. *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976).

And thus can be held civilly liable for negligent delay in passing on a request by the general counsel of the police department for an opinion as to constitutionality of a police regulation, provided the plaintiff establishes that the alleged deprivation of his constitutional rights because of arrest for violating the regulation was a natural consequence of the alleged negligence. *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976).

But Counsel is entitled to a "good faith-reasonableness" qualified immunity in a suit arising out of actions taken in his official capacity. *Shifrin v. Wilson*, 412 F. Supp. 1282 (D.D.C. 1976).

Corporation Counsel is not required to

represent private petitioners seeking involuntary civil commitment of adult son or daughter. *District of Columbia v. Pryor*, App. D.C., 366 A.2d 141 (1976).

Weight of opinions of the Counsel. — Opinions rendered by the Corporation Counsel concerning the application of the Height of Buildings Act are entitled to substantial deference, and should only be overturned on appeal if they are plainly unreasonable or contrary to legislative intent. *Techworld Dev. Corp. v. District of Columbia Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

Authority to seek review of Contract Appeals Board decisions. — Council deliberately chose to limit the Mayor's and the Corporation Counsel's authority in the procurement area and, thereby, conferred on the Department of Administrative Services the exclusive authority to seek judicial review of Contract Appeals Board decisions against the District. *Francis v. Recycling Solutions, Inc.*, App. D.C., 695 A.2d 63 (1997).

Cited in *Stone v. District of Columbia*, 237 F.2d 28 (D.C. Cir.), cert. denied, 352 U.S. 934, 77 S. Ct. 221, 1 L. Ed. 2d 160 (1956); *In re Kossow*, App. D.C., 393 A.2d 97 (1978); *Rustin v. District of Columbia*, App. D.C., 491 A.2d 496, cert. denied, 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290 (1985); *United States Parole Comm'n v. Noble*, App. D.C., 693 A.2d 1084 (1997).

§ 1-362. Duties of Assistant Corporation Counsels.

The Assistant Corporation Counsels shall, under the direction and control of the Corporation Counsel, perform such duties as may, with the consent of the Mayor, be assigned to them by the said Corporation Counsel. (Leg. Assem., Aug. 23, 1871, ch. 108, § 19; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951; 1973 Ed., § 1-302.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-363. Corporation Counsel and Assistants may administer oaths.

The Corporation Counsel and Assistant Corporation Counsels are hereby authorized to administer oaths and affirmations in the discharge of their official duties within the District of Columbia. (Leg. Assem., Aug. 19, 1871, ch. 51; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; 1973 Ed., § 1-303.)

§ 1-364. Director of the Department of General Services; duties; bond.

Repealed.

(July 1, 1882, 22 Stat. 139, ch. 263, § 1; Apr. 27, 1904, 33 Stat. 363, ch. 1628; Mar. 2, 1911, 36 Stat. 966, ch. 192; June 26, 1912, 37 Stat. 140, ch. 182; 1973 Ed., § 1-304; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Legislative history of Law 11-259. — See note to § 1-336.

§ 1-365. Agents of the Director of the Department of General Services.

Repealed.

(May 26, 1908, 35 Stat. 274, ch. 198; 1973 Ed., § 1-305; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Legislative history of Law 11-259. — See note to § 1-336.

§ 1-366. Duties of Municipal Architect.

Repealed.

(Mar. 3, 1909, 35 Stat. 692, ch. 250; June 26, 1912, 37 Stat. 144, ch. 182; 1973 Ed., § 1-306; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Legislative history of Law 11-259. — See note to § 1-336.

Office of Municipal Architect abolished. — The Office of the Municipal Architect was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 42 of the Board of Commissioners, dated June 23, 1953 established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department was to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The Order set out the functions of

the new Department and its organization. The Order abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Superintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division, and provided that all of their functions and positions be transferred to the Department of Buildings and Grounds. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Buildings and Grounds by Re-

organization Order No. 42 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969. The functions of the Department of General Services were transferred to the Department of Administrative

Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984, except the functions of the Department of General Services which were transferred to the Department of Public Works pursuant to Reorganization Plan No. 4 of 1983.

CHAPTER 4. DELEGATE TO THE HOUSE OF REPRESENTATIVES.

Sec.

1-401. Delegate to the House of Representatives from the District of Columbia.

Sec.

1-402. Applicability of federal laws.

§ 1-401. Delegate to the House of Representatives from the District of Columbia.

(a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the "Delegate to the House of Representatives from the District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with Chapter 13 of this title. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by § 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

(b)(1) No individual may hold the Office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election:

(A) He is a qualified elector (as that term is defined in § 1-1302(2)) of the District of Columbia;

(B) He is at least 25 years of age;

(C) He holds no other paid public office; and

(D) He has resided in the District of Columbia continuously since the beginning of the 3-year period ending on such date.

(2) He shall forfeit his office upon failure to maintain the qualifications required by this subsection. (Sept. 22, 1970, 84 Stat. 848, Pub. L. 91-405, title II, § 202; 1973 Ed., § 1-291.)

Cited in *Hobson v. Board of Elections*, 444 F.2d 874 (D.C. Cir.), cert. denied, 402 U.S. 988, 91 S. Ct. 1664, 29 L. Ed. 2d 154 (1971); *Barry v.*

District of Columbia Bd. of Elections & Ethics, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

§ 1-402. Applicability of federal laws.

The provisions of law which appear in:

- (1) Section 25 (relating to oath of office),
- (2) Section 31 (relating to compensation),
- (3) Section 34 (relating to payment of compensation),
- (4) Section 35 (relating to payment of compensation),
- (5) Section 37 (relating to payment of compensation),
- (6) Section 38a (relating to compensation),
- (7) Section 39 (relating to deductions for absence),
- (8) Section 40 (relating to deductions for withdrawal),
- (9) Section 40a (relating to deductions for delinquent indebtedness),
- (10) Section 41 (relating to prohibition on allowance for newspapers),
- (11) Section 42c (relating to postage allowance),

(12) Section 46b (relating to stationery allowance),
 (13) Section 46b-1 (relating to stationery allowance),
 (14) Section 46b-2 (relating to stationery allowance),
 (15) Section 46g (relating to telephone, telegraph, and radio-telegraph allowance),
 (16) Section 47 (relating to payment of compensation),
 (17) Section 48 (relating to payment of compensation),
 (18) Section 49 (relating to payment of compensation),
 (19) Section 50 (relating to payment of compensation),
 (20) Section 54 (relating to provision of United States Code Annotated or Federal Code Annotated),
 (21) Section 60g-1 (relating to clerk hire),
 (22) Section 60g-2(a) (relating to interns),
 (23) Section 80 (relating to payment of compensation),
 (24) Section 81 (relating to payment of compensation),
 (25) Section 82 (relating to payment of compensation),
 (26) Section 92 (relating to clerk hire),
 (27) Section 92b (relating to pay of clerical assistants),
 (28) Section 112e (relating to electrical and mechanical office equipment),
 (29) Section 122 (relating to office space in the District of Columbia), and
 (30) Section 123b (relating to use of House Recording Studio),
 of Title 2 of the United States Code shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. The Federal Corrupt Practices Act and the Federal Contested Election Act shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. (Sept. 22, 1970, 84 Stat. 852, Pub. L. 91-405, title II, § 204(a); 1973 Ed., § 1-292.)

References in text. — Sections 41, 42c, 46b, 46b-2, and 46g of Title 2 of the United States Code, referred to in (10), (11), (12), (14), and (15), respectively, were repealed by § 203 of the Act of August 20, 1996, Pub. L. 104-186, Title II, 110 Stat. 1726.

Section 60g-1 of Title 2 of the United States Code, referred to in (21), was repealed by § 477(a)(2) of the Act of October 26, 1970, Pub. L. 91-510, effective immediately prior to noon on January 3, 1971.

Section 81 of Title 2 of the United States Code, referred to in (24), was repealed by § 505(2) of the Act of July 12, 1974, Pub. L. 93-344, 88 Stat. 322.

Section 82 of Title 2 of the United States

Code, referred to in (25), was repealed by § 220(d) and (e) of the Act of June 6, 1972, Pub. L. 92-310, 86 Stat. 204.

Section 122 of Title 2 of the United States Code, referred to in (29), was repealed by § 111 of the Act of September 30, 1978, Pub. L. 95-391, 92 Stat. 778.

The “Federal Corrupt Practices Act”, referred to in the last paragraph, was repealed by § 405 of the Federal Election Campaign Act of 1971, approved February 7, 1972, Pub. L. 92-225, 86 Stat. 3.

The “Federal Contested Election Act”, referred to in the last paragraph, is the Act of December 5, 1969, Pub. L. 91-138, 83 Stat. 284.

CHAPTER 5. OFFICERS AND EMPLOYEES GENERALLY.

Sec.

- 1-501. Oath to be taken by officers.
- 1-502. Reports by custodians of property.
- 1-503. Employment to be authorized and compensation to be paid from specific appropriations; moneys returned to Treasury.
- 1-504. Designation by Mayor of Dr. King's birthday as holiday.
- 1-505. Effect of signature by mark upon payment of compensation.
- 1-506. Refusal to give testimony relating to office or employment.
- 1-507. Goal of affirmative action in District government employment; "available work force" defined.
- 1-508. Agency affirmative action plan — Development; submission.
- 1-509. Same — Goal of representation; actual employment levels.
- 1-510. Same — Projections of hires and promotions for period of plan.
- 1-511. Same — Program for securing equal employment opportunity.

Sec.

- 1-512. Continuing responsibility of agencies for equal employment opportunity.
- 1-513. Agency affirmative action plan; number of hires, promotions and terminations during period of plan.
- 1-514. Detail by Mayor of nonuniformed equal employment opportunity officers and specialists to Office of Human Rights; limitation; uniformed positions unaffected.
- 1-515. Assistance of Civil Service Commission in development of District merit system.
- 1-516. Renumeration based on District employment subject to attachment and garnishment for child support, maintenance or alimony payments; legal process.
- 1-517. Technical assistance.

§ 1-501. Oath to be taken by officers.

All civil officers in the District shall, before they act as such, respectively take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; and the oath or affirmation provided for by this section shall be taken and subscribed, certified, and recorded, in such manner and form as may be prescribed by law. (R.S., D.C., § 85; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; 1973 Ed., § 1-308.)

Cross references. — As to renewal of oath, see 5 U.S.C. § 2905.

As to form of oath of office, see 5 U.S.C. § 3331.

Establishment of District of Columbia Board of Appeals and Review. — See Mayor's Order 96-27, March 5, 1996 (43 DCR 1367).

§ 1-502. Reports by custodians of property.

All persons in the employment of the government of the District of Columbia having, as a result of such employment, custody of or chargeable with property, other than real estate, belonging to the District of Columbia, shall, at such times and in such form as the Mayor of the District of Columbia shall require, make returns to said Mayor of all such property remaining in their possession, and the condition thereof, and, with reference to all property that may have come into their custody that shall have been consumed in use, a statement showing the quantity thereof and the purpose for which used. (July 21, 1914, 38 Stat. 553, ch. 191, § 7; Mar. 3, 1915, 38 Stat. 925, ch. 80, § 7; 1973 Ed., § 1-309.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-503. Employment to be authorized and compensation to be paid from specific appropriations; moneys returned to Treasury.

No civil officer, clerk, draftsman, compensation messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after June 30, 1905, be employed in any office, department, or other branch of the government of the District of Columbia or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation or is authorized as hereinafter provided, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made and at the rate of compensation usual and proper for such services, and on and after July 1, 1905, all moneys accruing from lapsed salaries, or for unused appropriations for salaries, shall be covered into the Treasury as are the balances of other unexpended appropriations for the support of the government of the District of Columbia. (Mar. 3, 1905, 33 Stat. 913, ch. 1406, § 2; 1973 Ed., § 1-310.)

Cross references. — As to general authority of District government to employ, see 5 U.S.C. § 3101. As the fixing of salaries of officers and employees of District government, see 5 U.S.C. § 5101 et seq.

Cited in *Washington v. Government of D.C.*, App. D.C., 152 A.2d 191 (1959); *Cities of*

Batavia, *Naperville*, *Rock Falls*, *Winnetka*, *Geneva*, *Rochelle* & *St. Charles v. Federal Energy Regulatory Comm'n*, 672 F.2d 64 (D.C. Cir. 1982); *Brewer v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 953 F. Supp. 406 (D.D.C. 1997).

§ 1-504. Designation by Mayor of Dr. King's birthday as holiday.

The Mayor is authorized to designate the holiday in honor of Dr. King as a holiday for all employees of the government of the District of Columbia. Employees who are required to work on that holiday shall be entitled to such pay as they are entitled to on other holidays during which they work. (1973 Ed., § 1-314b; July 12, 1977, D.C. Law 2-13, § 3, 24 DCR 1443.)

Cross references. — As to designation of Dr. King's Birthday as holiday, see § 28-2701.

Section references. — This section is referred to in § 1-633.4.

Legislative history of Law 2-13. — Law 2-13 was introduced in Council and assigned Bill No. 2-35, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor in May 2, 1977, it was

assigned Act No. 2-35 and transmitted to both Houses of Congress for its review.

§ 1-505. Effect of signature by mark upon payment of compensation.

After May 10, 1926, in the payment of compensation of per diem employees of the government of the District of Columbia, a signature by mark duly witnessed by an employee of such District designated for that purpose by the Mayor shall be deemed a full legal acquittance as to such signature. (May 10, 1926, 44 Stat. 453, ch. 276, § 7; 1973 Ed., § 1-315.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of the Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-506. Refusal to give testimony relating to office or employment.

(a) Any officer or employee of the District who refuses to testify upon matters relating to his office or employment in any proceeding wherein he is a defendant or is called as a witness upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit his office or employment and any emolument, perquisite, or benefit (by way of pension or otherwise) arising therefrom, and be disqualified from holding any public office or employment under the District.

(b) Any former officer or employee of the District who refuses to testify upon matters relating to his former office or employment in any proceeding wherein he is a defendant or is called as a witness upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit any emolument, perquisite, or benefit (by way of pension or otherwise) arising from such former office or employment, and be disqualified from holding any public office or employment under the District.

(c) If the retirement pay, pension, or annuity of any officer or employee or former officer or employee of the District is forfeited under this section, there shall be paid to such individual a sum equal to (1) the total amount paid by him as contributions toward such retirement pay, pension, or annuity, plus any accrued interest attributable to such contributions, less (2) the total amount of

such retirement pay, pension, or annuity received by him prior to such forfeiture. (June 29, 1953, 67 Stat. 108, ch. 159, title IV, § 409; 1973 Ed., § 1-319.)

Cited in *Spencer v. Bullock*, 216 F.2d 54 (D.C. Cir. 1954).

§ 1-507. Goal of affirmative action in District government employment; “available work force” defined.

The goal of affirmative action in employment throughout the District government is, and must continue to be, full representation, in jobs at all salary and wage levels and scales, in accordance with the representation of all groups in the available work force of the District of Columbia, including, but not limited to, Blacks, Whites, Spanish-speaking Americans, Native Americans, Asian Americans, females, and males. As used in §§ 1-507 to 1-514, “available work force” means the total population of the District of Columbia between the ages of 18 and 65. (1973 Ed., § 1-320a; May 6, 1976, D.C. Law 1-63, § 2, 22 DCR 6538.)

Section references. — This section is referred to in §§ 1-607.1 and 1-633.4.

Legislative history of Law 1-63. — Law 1-63 was introduced in Council and assigned Bill No. 1-133, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 18, 1975 and December 2, 1975, respectively. Disapproved by the Mayor on December 24, 1975, reenacted on January 19, 1976, and signed by the President on February 27, 1976, it was assigned Act No. 1-87 and transmitted to both Houses of Congress for its review.

Constitutionality. — See *Hammon v. Barry*, 813 F.2d 412 (D.C. Cir. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2023, 100 L. Ed. 2d 610 (1988).

The admitted goal of the District’s affirma-

tive action plan of achieving racial parity in the fire department was constitutionally invalid. *Hammon v. Barry*, 813 F.2d 412 (D.C. Cir. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2023, 100 L. Ed. 2d 610 (1988).

Fire department recruiting, hiring, and promoting practices. — The District has not demonstrated the requisite predicate of discrimination in the fire department’s recruiting, hiring, and promoting practices so as to justify use of a race-conscious hiring remedy; both the District and the District Court have failed to employ, and indeed even seriously to consider, nonrace-based alternatives. *Hammon v. Barry*, 813 F.2d 412 (D.C. Cir. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2023, 100 L. Ed. 2d 610 (1988).

Cited in *Dougherty v. Barry*, 869 F.2d 605 (D.C. Cir. 1989).

§ 1-508. Agency affirmative action plan — Development; submission.

Every District government agency shall develop and submit to the Mayor and Council an affirmative action plan. Such plan shall be submitted within 12 calendar weeks after May 6, 1976, and each year thereafter, at the time each agency’s annual budget is submitted to the Council. (1973 Ed., § 1-320b; May 6, 1976, D.C. Law 1-63, § 3, 22 DCR 6538.)

Section references. — This section is referred to in § 1-507.

Legislative history of Law 1-63. — See note to § 1-507.

Constitutionality. — The admitted goal of

the District’s affirmative action plan of achieving racial parity in the fire department was constitutionally invalid. *Hammon v. Barry*, 813 F.2d 412 (D.C. Cir. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2023, 100 L. Ed. 2d 610 (1988).

Fire department recruiting, hiring, and promoting practices. — The District has not demonstrated the requisite predicate of discrimination in the fire department's recruiting, hiring, and promoting practices so as to justify use of a race-conscious hiring remedy; both the

District and the District Court have failed to employ, and indeed even seriously to consider, nonrace-based alternatives. *Hammon v. Barry*, 813 F.2d 412 (D.C. Cir. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2023, 100 L. Ed. 2d 610 (1988).

§ 1-509. Same — Goal of representation; actual employment levels.

(a) Each plan shall state the number of females and males who are Black, White, Spanish-speaking, Native American, and Asian American, who would, by using the goal of their representation in the available work force in the District, be employed by the agency at the actual employment levels in the agency at the time the plan is submitted. Such numbers shall be broken down:

- (1) Agency wide;
- (2) Within each office in the agency; and
- (3) Within each pay level of each salary scale in the agency.

(b) These shall be the goals, not the quotas, of the plan. The plan shall also state the actual employment levels in the agency, broken down in the same way as the goals, and the difference between the actual employment and the goals. (1973 Ed., § 1-320c; May 6, 1976, D.C. Law 1-63, § 4, 22 DCR 6539.)

Section references. — This section is referred to in §§ 1-507, 1-510, and 1-511.

Cited in *Citizens' Coalition v. District of Columbia Zoning Comm'n*, App. D.C., 516 A.2d 506 (1986).

Legislative history of Law 1-63. — See note to § 1-507.

§ 1-510. Same — Projections of hires and promotions for period of plan.

The plan shall state the number of hires and promotions the agency projects for the period until the next plan is submitted, and the number of hires and promotions of the groups enumerated in § 1-509, projected for that period. Such projections shall be broken down in the manner provided in § 1-509. (1973 Ed., § 1-320d; May 6, 1976, D.C. Law 1-63, § 5, 22 DCR 6539.)

Section references. — This section is referred to in § 1-507.

Legislative history of Law 1-63. — See note to § 1-507.

§ 1-511. Same — Program for securing equal employment opportunity.

The plan shall further state what actions the agency is taking to secure the equal employment opportunity within the agency of the groups enumerated in § 1-509, and of the aging, the young, the handicapped, and the homosexual citizens of the District, whether such citizens be actual or potential employees of the District government. (1973 Ed., § 1-320e; May 6, 1976, D.C. Law 1-63, § 6, 22 DCR 6539.)

Section references. — This section is referred to in §§ 1-507 and 1-513.

Legislative history of Law 1-63. — See note to § 1-507.

§ 1-512. Continuing responsibility of agencies for equal employment opportunity.

Equal employment opportunity is a continuing responsibility of every agency, whether or not the hiring and promotion goals in affirmative action employment plans have been reached. (1973 Ed., § 1-320f; May 6, 1976, D.C. Law 1-63, § 7, 22 DCR 6540.)

Section references. — This section is referred to in § 1-507.

Legislative history of Law 1-63. — See note to § 1-507.

§ 1-513. Agency affirmative action plan; number of hires, promotions and terminations during period of plan.

The plan shall further state the number of hires, promotions, and terminations (due to retirement, death, reductions in service or force, lack of performance, disciplinary action, and all other reasons), and indicate the permanent, temporary, or probationary status of the terminated employees of, and personnel grievance and equal employment complaints instituted by, persons known to be members of the various classes specified in § 1-511, during the period since the previously submitted plan. (1973 Ed., § 1-320g; May 6, 1976, D.C. Law 1-63, § 8, 22 DCR 6540.)

Section references. — This section is referred to in § 1-507.

Legislative history of Law 1-63. — See note to § 1-507.

§ 1-514. Detail by Mayor of nonuniformed equal employment opportunity officers and specialists to Office of Human Rights; limitation; uniformed positions unaffected.

The Mayor shall have the authority and is directed to detail, on a full-time basis, all persons who, on May 6, 1976, are employed, on a full-time basis, as nonuniformed equal employment opportunity officers and equal employment opportunity specialists by any agency of the District government other than the Office of Human Rights, to work in the Office of Human Rights as investigators or in other positions, all directly involved in the decision of equal employment opportunity cases instituted against the District government or any of its agencies. No person so detailed shall work on cases instituted against the agency from which the person is detailed. The Mayor shall assign such details on May 6, 1976. The positions which such persons hold shall be transferred to the budget of the Office of Human Rights in and for Fiscal Year 1977. The Metropolitan Police Department and the Fire Department are not authorized by this section to abolish, leave unfilled, or reduce the authority or duties of any uniformed equal employment opportunity officer or specialist

position. This section shall not be construed to affect any uniformed position in the District government. (1973 Ed., § 1-320h; May 6, 1976, D.C. Law 1-63, § 9, 22 DCR 6540; Apr. 6, 1977, D.C. Law 1-100, § 2, 23 DCR 8730.)

Section references. — This section is referred to in § 1-507.

Legislative history of Law 1-63. — See note to § 1-507.

Legislative history of Law 1-100. — Law 1-100 was introduced in Council and assigned Bill No. 1-310, which was referred to the Com-

mittee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 20, 1976 and September 15, 1976, respectively. Signed by the Mayor on October 20, 1976, it was assigned Act No. 1-163 and transmitted to both Houses of Congress for its review.

§ 1-515. Assistance of Civil Service Commission in development of District merit system.

The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by § 1-242(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of § 1-1131. (1973 Ed., § 1-322; Dec. 24, 1973, 87 Stat. 823, Pub. L. 93-198, title VII, § 734.)

References in text. — “§ 1-1131”, referred to at the end of the last sentence of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258.

Present provisions similar to repealed § 1-

1131 are codified as § 1-1131.1 and 31 U.S.C. § 1537.

Definitions applicable. — The definitions contained in § 1-202 apply to this section.

§ 1-516. Renumeration based on District employment subject to attachment and garnishment for child support, maintenance or alimony payments; legal process.

(a) After July 25, 1977, wages, salaries, annuities, retirement and disability benefits, and other remuneration based upon employment, or other income owed by, due from, and payable by the government of the District of Columbia to any individual shall be subject to attachment, garnishment, assignment, or withholding under the District of Columbia Child Support Enforcement Amendment Act of 1985, provided the levy is predicated upon the entry of a judgment, order, or decree determining the individual's legal obligation to provide child support or to make maintenance or alimony payments. Whenever wages, salaries, annuities, retirement and disability benefits, or other remuneration based upon employment is sought to be levied pursuant to this section, the legal process shall be such as is usual in other cases of attachment, garnishment, assignment, or withholding under the District of Columbia Child Support Enforcement Amendment Act of 1985. The government of the District of Columbia shall be subject to process in the same manner and to the same extent as if it were a private person, except that no writ or similar process served under the authority of this section shall be honored by the government

of the District of Columbia unless a certified copy of the judgment, order, or decree upon which the levy is predicated has been provided to the Mayor of the District of Columbia or his duly authorized designee.

(b) After October 1, 1997, wages salaries, annuities, retirement and disability benefits, and other remuneration based upon employment, or other income owed by, due from, and payable by the government of the District of Columbia to any individual shall be subject to attachment, garnishment, assignment, or withholding in accordance with subchapter III of chapter 5 of title 16 of the District of Columbia Code in the same manner and to the same extent as if the government of the District of Columbia were a private person. (1973 Ed., § 1-323; July 26, 1977, D.C. Law 2-14, § 2, 24 DCR 1774; Feb. 24, 1987, D.C. Law 6-166, § 33(d), 33 DCR 6710; Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-33, § 11713.)

Cross references. — As to the attachment and garnishment of wages generally, see subchapter III of Chapter 5 of Title 16.

As to interception of District income tax refunds of individuals in arrears in court-ordered child support payments, see § 47-1812.11.

Effect of amendments. — Section 11713 of Pub. L. 105-33, 111 Stat. 784, added (b).

Legislative history of Law 2-14. — Law 2-14 was introduced in Council and assigned Bill No. 2-91, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 5, 1977 and May 3, 1977, respectively. Signed by the Mayor on May 23, 1977, it was assigned Act No. 2-42 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-166. — Law 6-166 was introduced in Council and assigned Bill No. 6-134, which was referred to the Com-

mittee On Human Services. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Child Support Enforcement Amendment Act of 1985," referred to in the first and second sentences of (a), is D.C. Law 6-166.

Garnishment is within province of legislature not courts. — If the garnishment of District of Columbia workers' salaries is to be permitted, then that relief lies within the province of the legislative branch — whether the Congress or the District Council — not the courts. *Allied Capital Lending Corp. v. Stubbs*, 123 WLR 389 (Super. Ct. 1995).

Cited in *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct.).

§ 1-517. Technical assistance.

Any federal agency (as defined in § 101 of title 31, United States Code) may provide, at the discretion of the head of the agency, technical assistance to, and training for, personnel of the Government of the District of Columbia. Such assistance shall be limited to assistance that does not interfere with the mission of the agency. The authority provided by this section shall expire three years from the date of enactment of this statute. (Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11722.)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of

Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

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- 1-633.2. Specific supersession of existing laws and agreements.
- 1-633.3. Police officers and fire fighters appointed after the date this chapter becomes effective.
- 1-633.4. Express retention of certain District of Columbia laws.
- 1-633.5. Miscellaneous provisions.
- 1-633.6. Rules of construction.
- 1-633.7. Mayoral nominees.

Subchapter XXXIV. Appropriations.

- 1-634.1. Authorization of appropriations.

Subchapter XXXV. Annual Report.

- 1-635.1. [Repealed].

Subchapter XXXVI. Separability.

- 1-636.1. Separability.

Subchapter XXXVII. Effective Date Provisions;
Implementation Task Force.

Sec.
 1-637.2. Implementation Task Force.

Sec.
 1-637.1. Effective date provisions.

Subchapter I. Findings; Purpose.

Cross references. — As to effective date of
 D.C. Law 2-139, see § 1-637.1.

§ 1-601.1. Findings.

The Council of the District of Columbia finds that:

(1) The provisions of § 1-242(3) require that the Council of the District of Columbia adopt a comprehensive merit system of personnel management for the government of the District of Columbia before January 2, 1980.

(2) The provisions of sections 201(f), 204(g), 422(3), 713(c) and (d), and 714(c) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 779), guarantee certain benefits to incumbent employees of the District of Columbia government and those persons transferred to the District of Columbia government from the formerly independent National Capital Housing Authority, District of Columbia Redevelopment Land Agency and the District of Columbia Department of Manpower including, without limitation, benefits relating to appointments, promotions, discipline, separation, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans preference.

(3) The present authority for filling positions within the District of Columbia government is fragmented, both between the United States Civil Service Commission and the District of Columbia government, and among various subdivisions of the District government, such as, the District of Columbia Board of Education, the Trustees of the University of the District of Columbia and other independent boards and commissions. (1973 Ed., § 1-331.1; Mar. 3, 1979, D.C. Law 2-139, § 102, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-607.3, 1-2295.5, 4-916, and 47-2853.10.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Two Percent (2%) Mid-Year Adjustment of Pay Rates for Career & Excepted Service Employees of the D.C. Within the Scope of Collective Bargaining Repre-

sented by Compensation Units 1 (DS), 2 (WG) and 14 (LPNs). — See Mayor's Order 90-70, May 7, 1990.

Editor's notes. — References to original act sections appearing in (2) are untranslated since most of them referred to notes which have been dropped. Sections of the act are §§ 1-242(3) and 1-213(c), respectively.

Retrospective application of power of review of Office of Employee Appeals. — The Office of Employee Appeals (OEA) should have at least been given the opportunity to hear teacher's appeal, even though teacher was dismissed prior to its establishment. The Comprehensive Merit Personnel Act, which established the OEA, was procedural and not substantive in nature, within the meaning of the rule pro-

viding that procedural laws are generally given retrospective application. *Montgomery v. District of Columbia*, App. D.C., 598 A.2d 162 (1991).

A public defender service non-attorney employee is covered by the Comprehensive Merit Personnel Act. *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

Cited in *Pender v. District of Columbia*, App. D.C., 430 A.2d 513 (1981); *American Fed'n of Gov't Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983); *Thomas v. Barry*, 729 F.2d 1469 (D.C. Cir. 1984); *Harris v. District of Columbia*, 652 F. Supp. 154 (D.D.C. 1986); *Washington Teachers' Union Local 6 v. District of Columbia*, 115 WLR 1057 (Super. Ct. 1987); *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987); *Grant v. District of Columbia*, App. D.C.,

545 A.2d 1262 (1988); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *District of Columbia Dep't of Cors. v. Teamsters Union Local 246*, App. D.C., 554 A.2d 319 (1989); *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989); *Teamsters Local Union 1714 v. Public Employee Relations Bd.*, App. D.C., 579 A.2d 706 (1990); *Hessey v. Burden*, App. D.C., 584 A.2d 1 (1990); *Zenian v. District of Columbia Office of Employee Appeals*, App. D.C., 598 A.2d 1161 (1991); *Davis v. Lambert*, 119 WLR 305 (Super. Ct. 1991); *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, App. D.C., 631 A.2d 1205 (1993); *Taggart-Wilson v. District of Columbia*, App. D.C., 675 A.2d 28 (1996); *District of Columbia v. Simpkins*, App. D.C., 720 A.2d 894 (1998).

§ 1-601.2. Purpose.

(a) The Council of the District of Columbia declares that it is the purpose and policy of this chapter to assure that the District of Columbia government shall have a modern flexible system of public personnel administration, which shall:

(1) Provide for increasingly autonomous control over personnel administration by the District of Columbia government;

(2) Create uniform systems for personnel administration among the executive departments and agencies reporting directly to the Mayor of the District of Columbia and among independent agencies, boards, and commissions in the District of Columbia government;

(3) Create separate personnel management systems for educational employees of the School of Law, the District of Columbia Board of Education, and the University of the District of Columbia;

(4) Insure the efficient administration of this personnel system;

(5) Establish impartial and comprehensive administrative or negotiated procedures for resolving employee grievances;

(6) Provide for a positive policy of labor-management relations including collective bargaining between the District of Columbia government and its employees; and

(7) Establish the means to recruit, select, develop, and maintain an effective and responsive work force consistent with merit principles.

(b) The Career and Educational Services established in subchapters VIII and IX of this chapter shall follow merit principles such as the following:

(1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge and skills, including open and competitive consideration of qualified applicants for initial appointment;

(2) Providing equitable and adequate compensation;

(3) Training employees, as needed, to assure high-quality performance;

(4) Retaining employees on the basis of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; and

(5) Assuring, as provided in this chapter, fair treatment of applicants and employees in all aspects of employment without regard to political affiliation, race, color, national origin, sex, religious belief, age, marital status, personal physical appearance, sexual orientation or preference, family responsibilities, physical handicap, or developmental disability. A proper regard shall be accorded all rights of privacy and other constitutionally protected rights of citizens.

(c) Employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office. (1973 Ed., § 1-331.2; Mar. 3, 1979, D.C. Law 2-139, § 103, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(a), 33 DCR 7241.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — Law 6-177 was introduced in Council and assigned Bill No. 6-472, which was referred to the Committee on Education. The Bill was adopted on first and second readings on September 23, 1986 and October 7, 1986, respectively. Approved without the signature of the Mayor on October 31, 1986, it was assigned Act No. 6-227 and transmitted to both Houses of Congress for its review.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Purpose of chapter. — This chapter empowers the District government to develop its own comprehensive personnel system to replace the existing federal system. *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987).

In developing this legislation, the council hoped to create a modern, flexible, comprehensive city-wide system of public personnel administration. *District of Columbia Metro. Police Dep't v. Broadus*, App. D.C., 560 A.2d 501 (1989); *District of Columbia v. Thompson*, App.

D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

By enacting this Act, the Council of the District of Columbia fulfilled the mandate of the District of Columbia Self-Government Act to develop its own comprehensive merit personnel system to replace the federal system which had previously controlled the District government's relations with its employees. *District of Columbia v. Thompson*, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Exclusive expression of policy governing District personnel matters. — In the District of Columbia, the Comprehensive Merit Personnel Act (CMPA)—and only the CMPA—expresses the policy that governs all personnel matters affecting public employees throughout the District government. *District of Columbia Dep't of Cors. v. Teamsters Union Local 246*, App. D.C., 554 A.2d 319 (1989).

Cited in *Washington Teachers' Union Local 6 v. District of Columbia*, 115 WLR 1057 (Super. Ct. 1987); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989); *District of Columbia v. Fraternal Order of Police*, App. D.C., 691 A.2d 115 (1997); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

Subchapter II. Coverage; Status of Present Employees; Retention of Existing Personnel Rights and Benefits.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-602.1. Coverage; exceptions.

(a) Except as provided in subsection (c) of this section, unless specifically exempted from certain provisions, this chapter shall apply to all employees of

the District of Columbia government, except the Chief Judges and Associate Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the nonjudicial personnel of said Courts. With the exception of subchapters V and XVIII of this chapter, and § 1-608.1(e), employees of the D.C. General Hospital and the D.C. General Hospital Commission shall be exempt from the provisions of this chapter.

(b) Repealed.

(c) The provisions of subchapter XVI-A shall apply to employees of all District agencies, including, but not limited to employees of subordinate agencies, independent agencies, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the District of Columbia Housing Authority, and the Metropolitan Police Department. (1973 Ed., § 1-332.1; Mar. 3, 1979, D.C. Law 2-139, § 201, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(a), 34 DCR 5079; Mar. 16, 1989, D.C. Law 7-228, § 2(a), 36 DCR 754; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11261(b)(1); Oct. 7, 1998, D.C. Law 12-160, § 102(a)(1), 45 DCR 5147.)

Effect of amendments. — Section 11261(b)(1) of Pub. L. 105-33, 111 Stat. 760, deleted “Except as provided in subsection (b) of this section or” at the beginning of (a); and repealed former (b).

D.C. Law 12-160, in (a), added “Except as provided in subsection (c) of this section” to the beginning; and added (c).

Emergency act amendments. — For temporary amendment of section, see § 102(a)(1) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and § 102(a)(1) of the Whistleblower Reinforcement Congressional Review Emergency Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 7-228. — Law 7-228 was introduced in Council and assigned Bill No. 7-536, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 11, 1989, it was assigned Act No. 7-303 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-160. — Law 12-160, the “Whistleblower Reinforcement Act of 1998,” was introduced in Council and assigned Bill No. 12-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-398 and transmitted to both Houses of Congress for its review. D.C. Law 12-160 became effective on October 7, 1998.

Washington Convention Center. — Section 9-817 of the D.C. Code provides that the District of Columbia Government Comprehensive Merit Personnel Act of 1978 shall not apply to employees of the Washington Convention Center.

University employees. — University employment contracts must conform to this chapter and Title 8 of the District of Columbia Municipal Regulations. *Orange v. District of Columbia*, 59 F.3d 1267 (D.C. Cir. 1995).

Cited in *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

§ 1-602.2. Limited application of chapter.

The provisions of this chapter shall apply to the following employees of the District of Columbia government only to the following extent:

(1) The Mayor and each member of the Council of the District of Columbia are entitled to pay, as provided in § 1-612.9, in accordance with the provisions of §§ 1-241(d) and 1-226(a). The Mayor and each member of the Council of the

District of Columbia may participate in personnel benefit programs authorized in subchapters XXII, XXIII, XXIV, and XXVII of this chapter, and are covered by the provisions of subchapters XIX, XXVI, XXX, XXXI, and XXXII of this chapter, and § 1-604.8;

(2) The President and each member of the District of Columbia Board of Education are entitled to pay, as provided in § 1-612.10, and may participate in personnel benefit programs authorized in subchapters XXII, XXIII, XXIV, and XXVII of this chapter. The President and each member of the District of Columbia Board of Education are covered by the provisions of subchapters XXVI, XXIX, XXX, XXXI, and XXXII of this chapter, and § 1-604.8;

(3) Except as otherwise provided in this chapter, each member of a board or commission appointed to perform part-time, temporary or intermittent duties is entitled to pay as provided in § 1-612.8. Full-time employees who serve on boards and commissions shall be paid in accordance with the provisions of § 1-612.4 or § 1-612.11. Individuals serving as employees of boards and commissions shall be covered by the provisions of § 1-608.1(e). Members of boards and commissions are covered by the provisions of subchapters XIX, XXIV, XXVI, XXX, XXXI, and XXXII and §§ 1-604.8 and 1-608.1(e) and shall, if eligible under the terms of an agreement entered into by the Mayor and a federal agency under the provisions of subchapter XXIX of this chapter, be covered by the provisions of subchapters XXII, XXIII, and XXVII of this chapter. This section shall not apply to compensation received by the Board of Education as provided in § 1-612.10;

(4) Each person employed as an educational employee of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of § 1-602.3.

(5) Each person employed by an Advisory Neighborhood Commission shall be governed by the provisions of subchapters XXII and XXIII of this chapter.

(6) Notwithstanding any other provision of District law, subchapter XVI-A shall apply to all District employees. (1973 Ed., § 1-332.2; Mar. 3, 1979, D.C. Law 2-139, § 202, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(a), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(b), 33 DCR 7241; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 136(a); Mar. 6, 1991, D.C. Law 8-203, § 4, 37 DCR 8420; Aug. 1, 1996, D.C. Law 11-152, § 302(a), 43 DCR 2978; Oct. 7, 1998, D.C. Law 12-160, § 102(a)(2), 45 DCR 5147.)

Cross references. — As to applicability of merit system to Washington Convention Center employees, see § 9-817.

As to applicability of the merit system to National Capital Revitalization Corporation, see § 1-2295.5.

Section references. — This section is referred to in § 1-604.4.

Effect of amendments. — D.C. Law 12-160 added (6).

Emergency act amendments. — For temporary amendment of section, see § 102(a)(2) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July

13, 1998, 45 DCR 5158) and § 102(a)(2) of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No.

3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 8-203. — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — Law 11-152, the “Fiscal Year 1996 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by

the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

Legislative history of Law 12-160. — See note to § 1-602.1.

Effective date. — Section 136(b) of Public Law 101-518, the District of Columbia Appropriations Act, 1991, provided that the amendments made by § 136(a) shall take effect as if included in the enactment of the Residency Preference Amendment Act of 1988 (D.C. Law 7-203, March 16, 1989).

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-602.3. Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

(a) Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of this chapter with the exception of subchapters VIII, X (except to the extent provided therein), and XI of this chapter. Subchapter IX of this chapter shall only apply to such educational employees.

(b) Educational employees of the Board of Trustees of the University of the District of Columbia shall not be governed by the provisions of § 1-610.1 relating to the development of job descriptions in consultation with the Mayor. The Board of Trustees of the University of the District of Columbia shall develop policies on classification, appointment, promotion, retention, and tenure of employees consistent with the educational missions of their respective schools and in accordance with the sound policies and practices of the American Bar Association in the case of the School of Law, and of land-grant universities that meet the standards established by the College and Universities Personnel Association in the case of the University of the District of Columbia. Additionally, educational employees shall not be covered by subchapters VIII, XI, XII (except as it provides for pay setting), XIV, XV, XX, and XXV of this chapter. (1973 Ed., § 1-332.3; Mar. 3, 1979, D.C. Law 2-139, § 203, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(c), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(b), 43 DCR 2978; Mar. 24, 1998, D.C. Law 12-81, § 2(a), 45 DCR 745.)

Section references. — This section is referred to in §§ 1-602.2, 1-604.4, 1-604.6, and 1-609.1.

Effect of amendments. — D.C. Law 12-81,

in (b), deleted “respectively” following “shall develop” in the second sentence.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1997,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — See note to § 1-602.2.

Contracts to conform to chapter. — University employment contracts must conform to this chapter and Title 8 of the District of Columbia Municipal Regulations. *Orange v. District of Columbia*, 59 F.3d 1267 (D.C. Cir. 1995).

Right to contest a reduction in force. — Because subsection (b) states that educational employees shall not be allowed to appeal a reduction in force to the Office of Employment Appeals, it follows that the University of the District of Columbia rule which provided that an employee may file an appeal must be construed to confer the right of appeal to only noneducational employees. *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992).

Even though the Office of Employee Appeals cannot review the claims of an employee of the University of the District of Columbia contesting a reduction in force, the employee is not without adequate remedy, because he may invoke the general equitable jurisdiction of the Superior Court so that he would be afforded a right to a hearing. *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992).

Cited in *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987); *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989); *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997); *Stockard v. Moss*, App. D.C., 706 A.2d 561 (1997).

§ 1-602.4. Status of employees employed by the District of Columbia government on the date that this chapter becomes effective as provided in § 1-637.1; retention of existing rights.

(a) Persons employed by the District of Columbia government serving on the date that this chapter becomes effective, as provided in § 1-637.1, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of personnel law and rules and regulations in force on the date immediately prior to the date that this chapter becomes effective as provided in § 1-637.1.

(b) All provisions of existing contracts between the District government and labor organizations shall be honored until their expiration.

(c) On January 1, 1980, all persons employed by the District of Columbia government, including those persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in § 1-637.1, shall automatically transfer into the appropriate personnel system as established pursuant to subchapters VIII and IX of this chapter or § 1-610.4 or § 1-610.9. The classification of and compensation for the position assumed upon transfer, and the rights and benefits inhering in such position, shall be at least equal to the classification, compensation, rights and benefits associated with the position from which said employee is transferred. The rights and benefits protected under this subsection shall be only those applicable to said employees under the provisions of personnel laws and rules and regulations in force on December 31, 1979: Provided, however, that no employee covered

under the provision of this subsection shall be reduced in pay except as provided in subchapter XXV of this chapter.

(d) After January 1, 1980, persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in § 1-637.1 and who transfer into the appropriate personnel system, pursuant to subsection (c) of this section, shall be governed by the provisions of this chapter, with the exception of subsection (e) of § 1-608.1 and subsection (d) of § 1-609.1.

(e) Employees hired on or after the date that this chapter becomes effective as provided in § 1-637.1 shall be governed by all the provisions of this chapter without exception. (1973 Ed., § 1-332.4; Mar. 3, 1979, D.C. Law 2-139, § 204, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 21(b), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-602.5, 1-602.6, 1-603.1, 1-608.1, and 1-618.16.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

References in text. — Section 1-610.9, referenced in (c), was repealed by D.C. Law 12-260, § 2(f), 46 DCR 1318, effective April 20, 1999.

Generally. — The District may not selectively supersede those portions of the federal personnel act relating to attorney's fees until the benefits are replaced with equivalent alter-

natives in the Comprehensive Merit Personnel Act for pre-1980 employees, who previously enjoyed the federal entitlement. *District of Columbia v. Hunt*, App. D.C., 520 A.2d 300 (1987).

Rights conferred by section. — Because this section conferred to employee only those protections to which she was entitled prior to January 1, 1980, and because employee did not enjoy, in 1979, the right not to be terminated without cause, it follows that the enactment of subsection (c) did not invest her with such a right. *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-602.5. Development of new personnel system.

In accordance with the provisions of § 1-602.4, the Mayor and each personnel authority shall cause the development of unified systems for all employees of the District of Columbia government. Each employee of the District of Columbia government employed on December 31, 1979, shall be guaranteed no reduction of current pay and benefits except as provided in subchapter XXV of this chapter. (1973 Ed., § 1-332.5; Mar. 3, 1979, D.C. Law 2-139, § 205, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-602.6. Supersession provisions; effectiveness of collective bargaining on compensation matters.

On the date that the provisions of § 1-618.16 become operational and negotiations commence concerning compensation matters, all employees of the District government in the appropriate bargaining units under § 1-618.16, including those described in § 1-602.4, shall be subject to the procedures and provisions for establishing compensation provided in § 1-618.16: Provided, however, that no employee subject to the provisions of § 1-602.4 shall be reduced in actual pay, except in accordance with the provisions of subchapter

XXV of this chapter. (1973 Ed., § 1-332.6; Mar. 3, 1979, D.C. Law 2-139, § 206, 25 DCR 5740.)

Section references. — This section is referred to in § 1-618.17.

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter III. Definitions.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-603.1. Definitions.

For the purpose of this chapter unless otherwise required by the context:

(1) The term “agency” means any unit of the District of Columbia government required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District of Columbia government created by the reorganization of 1 or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

(2) The term “boards and commissions” means bodies established by law or by order of the Mayor of the District of Columbia consisting of appointed members to perform a trust or execute official functions on behalf of the District of Columbia government. Compensation or reimbursement of expenses, if any, to such members shall be provided according to § 1-612.8: Provided, however, that full-time employees shall be paid in accordance with the provisions of § 1-612.4 or § 1-612.11.

(3) The term “Career Service” means positions in the District of Columbia government as provided for in subchapter VIII of this chapter and § 1-602.4.

(4) The term “Council” means the Council of the District of Columbia, created pursuant to § 1-221.

(5) The term “District” means the District of Columbia government (D.C. Code § 1-102).

(6) The term “educational employee” means an employee of the District of Columbia Board of Education or of the Board of Trustees of the University of the District of Columbia, except persons employed in any of the following types of positions:

(A) Clerical, stenographic, or secretarial positions;

(B) Custodial, building maintenance, building engineer, general maintenance, or general engineering positions;

(C) Bus drivers and other drivers involved in the transportation of persons, equipment, materials or inventory;

(D) Cooks, dieticians, and other positions involved in direct planning, preparation, service, and conditions of preparation and service of food;

(E) Technicians involved in the operation or maintenance of machinery, vehicles, equipment or the processing of materials and inventory; or

(F) Positions the major duties in which consist of the supervision of employees covered in subparagraphs (A) through (E) of this definition: Provided, however, that this subparagraph shall not be deemed to include heads of academic units at the School of Law or the University of the District of Columbia.

(7) The term “employee” means, except when specifically modified in this chapter, an individual who performs a function of the District government and who receives compensation for the performance of such services.

(8) The term “Excepted Service” means positions in the District of Columbia government as provided for in subchapter X of this chapter.

(9) The term “Executive Service” means any subordinate agency head whom the Mayor is authorized to appoint in accordance with subchapter XI of this chapter.

(10) The term “grievance” means any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, but does not include adverse actions resulting in removals, suspension of 10 days or more, or reductions in grade, reductions in force or classification matters. This definition applies to matters which are subject to procedures established pursuant to section § 1-617.3 and is not intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

(11) The term “head” means the highest ranking executive official of an agency.

(12) The term “holidays” means any day established as a legal holiday pursuant to subchapter XIII of this chapter.

(13) The term “independent agency” means any board or commission of the District of Columbia government not subject to the administrative control of the Mayor, including, but not limited to, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the Board of Library Trustees, the Armory Board, the Board of Elections and Ethics, the Public Service Commission, the Zoning Commission for the District of Columbia, the Public Employee Relations Board, the District of Columbia Retirement Board, and the Office of Employee Appeals. For the purposes of this chapter, the Council of the District of Columbia shall be considered an independent agency of the District of Columbia. For the purposes of subchapter XXIX of this chapter, the Washington Metropolitan Area Transit Commission shall be considered an independent agency of the District.

(13A) The term “nonschool-based personnel” means any employee of the District of Columbia Public Schools who is not based at a local school or who does not provide direct services to individual students.

(14) The term “personnel authority” means an individual with the authority to administer all or part of a personnel management program as provided in subchapter IV of this chapter.

(15) The term “resident” means any person who is a domiciliary of the District of Columbia and who throughout his or her employment by the District maintains a place of abode in the District of Columbia as his or her actual, regular, and principal place of occupancy.

(15A) The term “school administrators” means principals, assistant principals, school program directors, coordinators, instructional supervisors, and support personnel of the District of Columbia Public Schools.

(16) The term “standard” means any criterion, guideline, or measure established by appropriate authority for the purpose of making objective comparisons or determinations for such purposes, including, but not limited to, the classification of positions, establishment of pay, evaluation of qualifications, and appraisal of work performance.

(17) The term “subordinate agency” means any agency under the direct administrative control of the Mayor, including, but not limited to, the following:

- (A) Office of Operations (Mayor’s Order 83-17);
- (B) Office of Economic Development (Mayor’s Order 83-18);
- (C) Office of Financial Management (Mayor’s Order 83-19);
- (D) Office of the Corporation Counsel (Reorganization Order 50);
- (E) Department of Corrections (Organization Order 7);
- (F) Department of Public Works (Reorganization Plan No. 4 of 1983);
- (G) Department of Finance and Revenue (Commissioner’s Order 69-96);
- (H) Fire and Emergency Medical Services Department (Reorganization Order 6);
- (I) Department of Administrative Services (Reorganization Plan No. 5 of 1983);
- (J) Department of Housing and Community Development (Reorganization Plan 3 of 1975);
- (K) Repealed.
- (L) Metropolitan Police force (D.C. Code, § 4-107);
- (M) Department of Recreation and Parks (Organization Order 10);
- (N) Department of Human Services (Reorganization Plan No. 2 of 1979 and Mayor’s Reorganization Plan No. 3 of 1986), including:
 - (i) The Commission on Social Services;
 - (ii) Repealed.
 - (iii) The Commission on Mental Health; and
 - (iv) The Commission on Health Care Finance.
- (O) Department of Employment Services (Reorganization Plan No. 1 of 1980);
- (P) Department of Consumer and Regulatory Affairs (Reorganization Plan No. 1 of 1983);
- (Q) Office of Emergency Preparedness (Commissioner’s Order 74-261);
- (R) Office of Human Rights (Commissioner’s Order 71-224);
- (S) Office of Personnel (D.C. Code, § 1-604.2);
- (T) Office of Latino Affairs (D.C. Code, § 1-2311);
- (U) Office on Aging (D.C. Code, § 6-2211);
- (V) Board of Appeals and Review (Organization Order 112);
- (W) Board of Parole (Organization Order 6);
- (X) Repealed;
- (Y) Office of Business and Economic Development (D.C. Code, § 1-2202);

(Z) Office of the Secretary of the District of Columbia (Mayor's Order 84-77);

(AA) Office of Inspector General (D.C. Code, § 1-1182.8);

(BB) Repealed;

(CC) Repealed;

(DD) Office of Cable Television (D.C. Code, § 43-1805);

(EE) Repealed;

(FF) Repealed;

(GG) Repealed;

(HH) Office of the Budget (Mayor's Order 79-5);

(II) Repealed;

(JJ) Office of Banking and Financial Institutions (D.C. Code, § 26-802.1(a)(1));

(KK) Repealed;

(LL) Commission on the Arts and Humanities;

(MM) Department of Health;

(NN) Office of Contracting and Procurement;

(OO) The Commission on Health Care Finance;

(PP) Department of Insurance and Securities Regulation;

(QQ) Office of Property Management;

(RR) Office of the Chief Technology Officer;

(SS) Department of Motor Vehicles; and

(TT) Office of Planning (Mayor's Order 83-25). (1973 Ed., § 1-333.1; Mar. 3, 1979, D.C. Law 2-139, § 301, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(c), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(d), 33 DCR 7241; Mar. 16, 1989, D.C. Law 7-201, § 2, 36 DCR 248; Mar. 24, 1990, D.C. Law 8-97, § 3(a), 37 DCR 1046; Sept. 26, 1995, D.C. Law 11-52, § 801(a), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(a), 43 DCR 5; Jan. 26, 1996, D.C. Law 11-78, § 501(a), 42 DCR 6181; Sept. 26, 1996, D.C. Law 11-52, § 1001(a), 42 DCR 3684; Apr. 26, 1996, 110 Stat. [215], Pub. L. 104-134, § 145(1); Aug. 1, 1996, D.C. Law 11-152, § 302(c), 43 DCR 2978; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 138(1); Apr. 9, 1997, D.C. Law 11-255, § 4(a), 44 DCR 1271; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11261(b)(2); June 10, 1998, D.C. Law 12-124, § 101(a), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, §§ 1807, 1817, 1828, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, §§ 5(a), 53, 46 DCR 2118; _____, 1999, D.C. Law 12-(Act 12-622), § 3, 46 DCR 1355.)

Section references. — This section is referred to in §§ 1-613.4, 1-711, 1-2286, and 1-3002.

Effect of amendments. — D.C. Law 11-255 made minor capitalization changes in (13A) and (15A).

Section 11261(b)(2) of Pub. L. 105-33, 111 Stat. 760, in (13), substituted "shall be considered an independent agency" for "the Superior Court of the District of Columbia, and the District of Columbia Court of Appeals shall be considered independent agencies."

D.C. Law 12-124 rewrote (10); and in (17), substituted "Fire and Emergency Medical Ser-

vices Department" for "Fire Department" in (H), inserted "and Parks" following "Recreation" in (M), substituted "Human Development" for "Human Services" in (N), added the subparagraphs designated herein as (LL), (MM), (NN), (OO), and (PP), and repealed (K), (N)(ii), (X), (BB), (CC), (EE), (FF), (GG), (II), and (KK).

D.C. Law 12-175 added the subparagraphs designated herein as (17)(QQ) through (SS).

D.C. Law 12-(Act 12-622) added the subparagraph designated herein as (17)(TT).

D.C. Law 12-264, in (17)(N), substituted "Human Services" for "Human Development."

Emergency act amendments. — For temporary amendment of section, see §§ 1407, 1417, and 1428 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and §§ 1407, 1417, and 1428 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 1430 of D.C. Act 12-401 provides for the application of § 1428.

Section 2101 of D.C. Act 12-564 provides for the application of the act.

For temporary amendment of section, see § 3 of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 7-201. — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-29. — Law 11-29, the "Human Services Reduction Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-209. The Bill was adopted on first and second readings on April 4, 1995, and May 2, 1995, respectively. Signed by the Mayor on May 26, 1995, it was assigned Act No. 11-59 and transmitted to both Houses of Congress for its review. D.C. Law 11-29 became effective on July 25, 1995.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No.

11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-124. — Law 12-124, the "Omnibus Personnel Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both Houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-(D.C. Act 12-622). — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No.

_____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on January 5, 1999, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on _____.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was

assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Amendment of Organization Order No. 112, establishing Board of Appeals and Review. — See Mayor's Order 84-31, February 9, 1984.

Grievance. — A decision of the Metropolitan Police Department denying administrative sick leave is a grievance and as such, it must be appealed to the Office of Employee Appeals prior to judicial review. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

The definition of grievance is clearly broad enough to include denial of a promotion of a faculty employee of the University of the District of Columbia. *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989).

Right to file grievance against government employer. — This Act and a union

contract afford the employee rights to file grievances against the governmental employer for any matter which impairs or adversely affects the employee's interest, concern, or welfare. *District of Columbia v. Thompson*, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Career Service employee. — Though employee supervised relatively few clerical employees in course of predominantly procurement activities, he is not classified within the Career Service category as a matter of law. *Hoage v. Board of Trustees*, App. D.C., 714 A.2d 776 (1998).

Personnel authority. — By the terms of the Comprehensive Merit Personnel Act standing alone, the "personnel authority" for the Educational Institution Licensure Commission is the Mayor. *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987).

Cited in *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997); *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997); *Stockard v. Moss*, App. D.C., 706 A.2d 561 (1997).

Subchapter IV. Organization for Personnel Management.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-604.1. Policy.

It is the intent of the Council that the District's personnel management system provide for equitable application of appropriate rules or regulations among all agencies. Further, it is the intent of the Council that the rules, regulations, and standards issued by the personnel authorities under this chapter should be as flexible and responsive as possible and reflect an awareness of innovation in the fields of modern personnel management and public administration. (1973 Ed., § 1-334.1; Mar. 3, 1979, D.C. Law 2-139, § 401, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Assessment of need for and availability of bilingual and multicultural government personnel. — D.C. Law 10-238 directed that the Mayor and each independent person-

nel authority shall establish a Committee of Language Diversity and shall make as assessment of the need for bilingual and multicultural personnel within their respective agencies.

§ 1-604.2. Office of Personnel established; appointment and eligibility of Director; delegation of Mayor's authority.

(a) There is established an Office of Personnel, the head of which is the Director of Personnel.

(b) The Director of Personnel shall be appointed by the Mayor in accordance with the provisions of subchapter XI of this chapter.

(c) To be eligible for appointment as Director of Personnel a person shall have demonstrated, through his or her knowledge and experience, the ability to administer a public personnel program of the size and complexity of the program established by this chapter.

(d) The Mayor may delegate his or her authority under this chapter, in whole or in part, to the Director of Personnel. (1973 Ed., § 1-334.2; Mar. 3, 1979, D.C. Law 2-139, § 402, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-299.2 and 1-603.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services. — See Mayor's Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor's Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator. — See Mayor's Order 97-6, January 9, 1997 (44 DCR 357).

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983).

§ 1-604.3. Authority of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia may delegate their duties and functions under this chapter, in whole or in part, to employees under their respective jurisdictions. (1973 Ed., § 1-334.3; Mar. 3, 1979, D.C. Law 2-139, § 403, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(e), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(d), 43 DCR 2978.)

Section references. — This section is referred to in § 1-604.4.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-604.4. Issuance of rules and regulations affecting personnel for employees of the District of Columbia.

(a) The Mayor shall issue rules and regulations to implement the provisions of subchapters II, IV, VII, VIII, IX-B, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, and XXXV of this chapter, for all employees of the District of Columbia, except as may be otherwise provided in this subchapter.

(b) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapter IX of this chapter.

(c)(1) The District of Columbia Board of Education shall issue rules and regulations to implement the provisions of subchapters VII, XIV, XX, XXV, and XXVIII of this chapter, and §§ 1-602.3, 1-604.3 and 1-612.11 for educational employees under its respective jurisdictions.

(2) The Board of the University of the District of Columbia shall issue rules and regulations to implement the provisions of subchapters VII and XXVIII of this chapter, and §§ 1-602.3, 1-604.3, and 1-612.11 for educational employees under its jurisdiction.

(3) Repealed.

(d) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapters XIII, XV, XVII, XVIII, XXVI, and XXXII of this chapter, and § 1-602.2(2) for all employees under their respective jurisdictions.

(e) The Public Employee Relations Board shall issue rules and regulations to carry out its authority under subchapters V and XVIII of this chapter.

(f) The Office of Employee Appeals shall issue rules and regulations to carry out its authority under subchapter VI of this chapter.

(g) The District of Columbia Board of Elections and Ethics shall issue rules and regulations to carry out its authority under subchapter XXVI of this chapter.

(h) Except where proscribed by law or issued under the authority of subsection (e), (f), or (g) of this section, rules and regulations issued pursuant to this chapter shall not be a bar to collective bargaining during the negotiation process with an exclusively recognized labor organization. (1973 Ed., § 1-334.4; Mar. 3, 1979, D.C. Law 2-139, § 404, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(f), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(e), 43 DCR 2978; Apr. 20, 1999, D.C. Law 12-260, § 2(b), 46 DCR 1318.)

Section references. — This section is referred to in §§ 1-604.5, 1-606.3, and 1-637.1.

Effect of amendments. — D.C. Law 12-260 inserted “IX-B” in (a).

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Legal Service Establishment Emergency

Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-260. — Law 12-260, the “Legal Service Establishment Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-660, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-612 and transmitted to both Houses of Congress for its review. D.C. Law 12-260 became effective on April 20, 1999.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police. — See Mayor’s Order 97-88, May 9, 1997 (44 DCR 2959).

§ 1-604.5. Issuance of rules and regulations.

Rules and regulations proposed or issued pursuant to § 1-604.4, and amendments, shall be issued according to the provisions of § 1-1506. (1973 Ed., § 1-334.5; Mar. 3, 1979, D.C. Law 2-139, § 405, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(b), 34 DCR 5079; June 10, 1998, D.C. Law 12-124, § 101(b), 45 DCR 2464.)

Section references. — This section is referred to in § 1-612.8.

Effect of amendments. — D.C. Law 12-124 rewrote the section.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-604.6. Personnel authority.

(a) The implementation of the rules and regulations shall be undertaken by the appropriate personnel authority for employees of the District.

(b) For the purposes of subsection (a) of this section, the personnel authority for District of Columbia government means the Mayor for all employees, except as provided in § 1-602.3 and as follows:

(1) For noneducational employees of the District of Columbia Board of Education, the personnel authority is the District of Columbia Board of Education;

(2) For noneducational employees of the Board of Trustees of the University of the District of Columbia, the personnel authority is the Board of Trustees of the University of the District of Columbia;

(3) For employees of the Council of the District of Columbia, the personnel authority is: (A) The Chairman of the Council for all central staff of the Council. For the purposes of this subchapter, the term “central staff of the Council” refers to those employees described in § 1-610.3(a)(3) except those assigned to an individual member of the Council: Provided, however, that the Secretary, General Counsel, and Budget Director to the Council to the Council shall be appointed by the Council of the District of Columbia according to its rules of procedure and organization; and (B) each member of the Council for his or her personal and committee staff: Provided, however, that the respective committees of the Council shall approve the appointment of each committee

staffperson. The Chairman and each member of the Council shall utilize the Secretary to the Council for the actual transaction of all personnel matters for employees of the Council;

(4) For employees of the District of Columbia Board of Elections and Ethics, the personnel authority is the District of Columbia Board of Elections and Ethics: Provided, however, that this authority shall not apply to the Director of Campaign Finance (D.C. Code, § 1-1431). For employees in the Office of Director of Campaign Finance, the personnel authority is the Director of Campaign Finance;

(5) For employees of the Public Service Commission, the personnel authority is the Public Service Commission: Provided, however, that the People's Counsel (D.C. Code, § 43-406) shall be appointed according to law and for employees under the direct administrative control of the People's Counsel, the personnel authority is the People's Counsel;

(6) For the Executive Director of the Public Employee Relations Board, created by subchapter V of this chapter, the personnel authority is the Public Employee Relations Board; and for all other employees of the Board, the personnel authority is the Executive Director of the Board;

(7) For the Executive Director of the Office of Employee Appeals and the General Counsel of the Office of Employee Appeals created by subchapter VI of this chapter, the personnel authority is the Office of Employee Appeals; and for all other employees of the Office, the personnel authority is the Executive Director;

(8) For employees of the Office of District of Columbia Auditor (D.C. Code, § 47-117), the personnel authority is the Auditor of the District of Columbia;

(9) Repealed;

(10) For employees of the District of Columbia Armory Board (D.C. Code, § 2-302), the personnel authority is the Armory Board;

(11) For employees of the District of Columbia Law Revision Commission, the personnel authority is the District of Columbia Law Revision Commission;

(12) For employees of the District of Columbia Board of Library Trustees, the personnel authority is the Board of Library Trustees;

(13) Repealed;

(14) For the Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board ("Board"), the personnel authority is the Board, and for all other employees of the Board the personnel authority is the Executive Director of the Board;

(15) For employees of the District of Columbia Retirement Board, the personnel authority is the District of Columbia Retirement Board; and

(16) For the Director of the Office of Zoning, the personnel authority shall be the District members of the Zoning Commission for the District of Columbia, and for any other employee of the Office of Zoning the personnel authority shall be the Director of the Office of Zoning. (1973 Ed., § 1-334.6; Mar. 3, 1979, D.C. Law 2-139, § 406, 25 DCR 5740; Feb. 26, 1981, D.C. Law 3-119, § 5, 27 DCR 5641; Aug. 2, 1983, D.C. Law 5-24, § 12(a), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(g), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(a), 34 DCR 670; Mar. 16, 1989, D.C. Law 7-228, § 2(b), 36 DCR 754; Mar. 24, 1990,

D.C. Law 8-97, § 3(b), 37 DCR 1046; May 15, 1990, D.C. Law 8-127, § 2(a), 37 DCR 2093; Sept. 20, 1990, D.C. Law 8-163, § 6, 37 DCR 4676; Aug. 1, 1996, D.C. Law 11-152, § 302(f), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(c), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-606.11, 1-610.5, and 40-1705.

Effect of amendments. — D.C. Law 12-124, in (b)(3), substituted “Secretary, General Counsel, and Budget Director to the Council” for “Secretary and General Counsel to the Council.”

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-119. — Law 3-119 was introduced in Council and assigned Bill No. 3-324, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-313 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 6-205. — Law 6-205 was introduced in Council and assigned Bill No. 6-526, which was referred to the Committee on Libraries, Recreation, and Charitable Games. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-265 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-228. — See note to § 1-602.1.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-127. — See note to § 1-606.6.

Legislative history of Law 8-163. — Law 8-163 was introduced in Council and assigned Bill No. 8-118, which was referred to the Com-

mittee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Approved without the signature of the Mayor on June 29, 1990, it was assigned Act No. 8-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Powers of Chief Financial Officer. — Section 152 of Pub. L. 104-134, 110 Stat. 1321 [220] provided that:

“Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997 —

“(a) the heads and all other personnel of the following offices, together with all other District of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:

“The Office of the Treasurer.

“The Controller of the District of Columbia.

“The Office of the Budget.

“The Office of Financial Information Services.

“The Department of Finance and Revenue.

“The District of Columbia Financial Responsibility and Management Assistance Authority established pursuant to Public Law 104-8, approved April 17, 1995, may remove such individuals from office for cause, after consultation with the Mayor and the Chief Financial Officer.

“(b) the Chief Financial Officer shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of title IV of the District of Columbia Self-Government and Governmental Reorganization Act of 1993, approved December 24, 1973 (87 Stat. 774; Public Law 93-198), as amended, for fiscal years 1996, 1997 and 1998, annual estimates of the expenditures and appropriations necessary for the operation of

the Office of the Chief Financial Officer for the year. All such estimates shall be forwarded by the Mayor to the Council of the District of Columbia for its action pursuant to sections 446 and 603(c) of such Act, without revision but subject to recommendations. Notwithstanding any other provisions of such Act, the Council may comment or make recommendations concerning such estimates, but shall have no authority to revise such estimates.”

Drug Free Workplace Policy. — See Mayor’s Order 90-27, January 31, 1990.

Delegation of Personnel Authority in the Metropolitan Police Department to

the Chief of Police. — See Mayor’s Order 97-88, May 9, 1997 (44 DCR 2959).

Educational Institution Licensure Commission. — By the terms of Comprehensive Merit Personnel Act (CMPA) standing alone, the “personnel authority” for the Educational Institution Licensure Commission (EILC) is the Mayor. *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987).

Cited in *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

§ 1-604.7. Transfer of personnel functions to Office of Personnel; exception; property and funds transferred; separation and reassignment of transferred employee.

All positions and employees of the District who spent 50 percent or more of their regular duty hours on January 1, 1976, or at any time since that date performing personnel functions, are transferred to the Office of Personnel unless properly reclassified by the District of Columbia Office of Personnel, except as provided herein. The provisions of this section shall not apply to employees in positions within the independent agencies. All property and funds associated with those positions and employees transferred to the Office of Personnel are transferred thereto as provided in subchapter XXXVII of this chapter unless prohibited by statute. Any employee found to be superfluous to the needs of the Office of Personnel shall be separated from his or her position in accordance with appropriate reduction-in-force procedures as provided in subchapter XXV of this chapter. The Mayor may authorize the reassignment of such employees as is appropriate. (1973 Ed., § 1-334.7; Mar. 3, 1979, D.C. Law 2-139, § 407, 25 DCR 5740.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-604.8. Oath of office.

Each personnel authority of an agency of the District shall designate a person to administer the oath of office to each employee of that agency. The oath shall be as follows:

“I, (employee’s name) do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office on which I am about to enter.”

(1973 Ed., § 1-334.8; Mar. 3, 1979, D.C. Law 2-139, § 408, 25 DCR 5740; Apr. 30, 1988, D.C. Law 7-104, § 36(a), 35 DCR 147.)

Section references. — This section is referred to in §§ 1-113 and 1-602.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Subchapter V. Public Employee Relations Board.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-605.1. Establishment of Board; qualifications; composition; term of office; removal; vacancies; conflict of interest; compensation; attendance at meetings; appointment of employees; request for appropriations; quorum.

(a) There is established a Public Employee Relations Board (hereinafter referred to in this subchapter as the “Board”) consisting of 5 members, not otherwise in the employment of any labor organization granted exclusive recognition under this chapter or the District of Columbia government: Except, that members of the Board of Labor Relations established by Commissioner’s Order 70-229 may be appointed to the Public Employee Relations Board. The members shall be appointed by the Mayor within 60 days after the effective date of this subsection.

(b) The Mayor shall select members of the Board from persons who through their experience have demonstrated an expert knowledge of the field of labor relations and who possess the integrity and impartiality necessary to protect the public interest and the interests of the District of Columbia government and its employees. Every effort shall be made to select members who have experience in public sector labor relations and preference shall be given to such persons in the Mayor’s appointments to the Board.

(c) The members of the Board shall be selected by the Mayor in the following manner:

(1) One member shall be chosen from those persons whose names appear upon lists proposed by labor organizations each of which has been granted exclusive recognition for at least 250 District government employees at the time that the Mayor is making his or her selection;

(2) One member shall be chosen from a list of at least 2 names proposed by an ad hoc committee appointed by the Mayor representing agency heads within the District government; and

(3) Three neutral members, of whom 1 shall be designated by the Mayor as Chairperson, shall be public members.

(d) The term of office for each member is 3 years: Except, that members first appointed to the Public Employee Relations Board shall serve the following terms: (1) Two members shall serve for 1 year; (2) two additional members shall serve for 2 years; and (3) the Chairperson shall serve a 3-year term. The

Mayor shall designate the term of each member at the time of his or her appointment.

(e) The Mayor may remove any member of the Board who engages in any activity prohibited by subsection (g) of this section or for repeated failures to attend Board meetings, and appoint a new member in accordance with the provisions of subsection (c) of this section to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity, he or she shall initiate an action in the Superior Court of the District of Columbia in accordance with the provisions of § 16-3521 et seq. to remove such member.

(f) Any vacancy occurring in the Board shall be filled within 45 days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(g) A member of the Board who: (1) Violates the provisions of subsection (a) of this section; (2) engages in a conflict of interest in violation of the provisions of subchapter XIX of this chapter; or (3) is convicted for an offense against the labor relations laws of the United States or of the District of Columbia, or for any other crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offenses, shall be removed from office as provided in this section.

(h) The procedure provided in subsection (c) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. If a vacancy occurs during a term due to removal, resignation, or death of a member, the new appointee's term of office shall be for the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsection (c) of this section. No person shall serve for more than 2 consecutive terms.

(i) If at any time any matter comes before the Board in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of said matter.

(j) Each member of the Board is entitled to compensation as provided in § 1-612.12. Each member of the Board is expected to attend the regularly scheduled meetings of the Board. Thus a member may be removed by the Mayor, as provided in subsection (g) of this section, for repeated failures to attend such meetings, thereby hindering the work of the Board.

(k) The Board may appoint such employees as may be required to conduct its business. The Board is authorized to request such appropriations as may be necessary to carry out its functions. Each employee of the Board, except the Executive Director, is in the Career Service as defined in subchapter VIII of this chapter.

(l) Three members of the Board shall constitute a quorum for the transaction of business. (1973 Ed., § 1-335.1; Mar. 3, 1979, D.C. Law 2-139, § 501, 25 DCR 5740.)

Cross references. — As to compensation for members of the Public Employee Relations Board, see § 612.8(c)(2)(D).

As to compensation of the Chairperson of the Public Employee Relations Board, see § 612.8(c)(2)(J).

As to effective date of D.C. Law 2-139, see § 1-637.1.

As to applicability of this subchapter to Washington Convention Center employees, see § 9-801 et seq.

Section references. — This section is referred to in §§ 1-633.7 and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

References in text. — “The effective date of this subsection,” referred to in the second sentence of (a), is March 3, 1979.

Cited in American Fed’n of Gov’t Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); **Council of Sch. Officers v. Vaughn**, App. D.C., 553 A.2d 1222 (1989); **Public Employee Relations Bd. v. Washington Teachers’ Union Local 6**, App. D.C., 556 A.2d 206 (1989); **Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia**, App. D.C., 631 A.2d 1205 (1993); **District of Columbia v. Fraternal Order of Police**, App. D.C., 691 A.2d 115 (1997).

§ 1-605.2. Powers of the Board.

The Board shall have the power to do the following:

(1) Resolve unit determination questions and other representation issues (including but not limited to disputes concerning the majority status of a labor organization);

(2) Certify and decertify exclusive bargaining representatives;

(3) Decide whether unfair labor practices have been committed and issue an appropriate remedial order;

(4) Resolve bargaining impasses through fact-finding, final and binding arbitration, or other methods agreed upon by the parties as approved by the Board and to remand disputes if it believes further negotiations are desirable. Arbitration shall not be conducted by the Board itself, but the Board shall provide arbitrators selected at random from a panel or list of arbitrators maintained by the Board and consisting of persons agreed upon by labor and management;

(5) Make a determination in disputed cases as to whether a matter is within the scope of collective bargaining;

(6) Consider appeals from arbitration awards pursuant to a grievance procedure; provided, however, that such awards may be modified or set aside or remanded, in whole or in part only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means; provided, further, that the provisions of this paragraph shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding provisions of §§ 16-4301 to 16-4319;

(7) Conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction;

(8) Administer oaths or affirmations and through the power of subpoena, require the attendance of witnesses with any necessary records or other information which have a bearing on the dispute, without, however, abrogating rules and regulations abridging the confidentiality of personnel files as provided in subchapter XXXII of this chapter;

(9) Make decisions and take appropriate action on charges of failure to adopt, subscribe, or comply with the internal or national labor organization standards of conduct for labor organizations;

(10) Make recommendations concerning desirable revisions or amendments to the District government labor relations law;

(11) Adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties;

(12) The Board may designate a 3-member panel to hear any matter brought to it under this chapter. The decision of the 3-member panel shall be considered the final decision of the Board. An appeal from a decision of any 3-member panel may be taken in accordance with the provisions of §§ 1-618.2 and 1-618.13;

(13) Establish and maintain a list of qualified mediators, fact finders and arbitrators after consulting with employee organizations and management representatives, and appoint them;

(14) Retain, through the Director of the Office of Contracting and Procurement, independent legal counsel to assist in Board activities when the District government is a party to the Board's proceedings or in any other situation as the Board deems appropriate;

(15) Develop a system for the collection, maintenance, and dissemination of labor-management relations information as appropriate to the needs of the District, labor organizations, and the public; and

(16) Seek appropriate judicial process to enforce its orders and otherwise carry out its authority under this chapter. In cases of contumacy by any party or other delay or impediment of any character, the Board may seek any and all such judicial process or relief as it deems necessary to enforce and otherwise carry out its powers, duties and authority under this chapter.

(17) Notwithstanding any other provision of this section, all procurement authority shall be vested in the Office of Contracting and Procurement; provided, that the Mayor's obligations pursuant to § 47-312, to provide financial review and approval of contracts is unaffected. (1973 Ed., § 1-335.2; Mar. 3, 1979, D.C. Law 2-139, § 502, 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 304(a), 44 DCR 1423; Sept. 18, 1998, D.C. Law 12-151, § 2(a), 45 DCR 4043.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Effect of amendments. — Section 304(a) of D.C. Law 11-259 inserted "through the Director of the Office of Contracting and Procurement" in (14); and added (17).

D.C. Law 12-151, in (6), substituted "may be modified or set aside or remanded, in whole or in part" for "may be reviewed" in the first proviso; and rewrote (12).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and

assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 12-151. — Law 12-151, the "Public Employee Relations Board Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-259, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May

22, 1998, it was assigned Act No. 12-368 and transmitted to both Houses of Congress for its review. D.C. Law 12-151 became effective on September 18, 1998.

Public Employee Relations Board has primary jurisdiction to determine whether a particular act or omission constitutes an unfair labor practice under this chapter, subject only to review by the courts under well established principles of administrative law. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

Deference to interpretation of Public Employee Relations Board. — Long-established principles of administrative law require the Court of Appeals to defer to the Public Employee Relations Board's interpretation of the Comprehensive Merit Personnel Act unless it is unreasonable or contrary to the statute's plain meaning. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

Claims regarding grievances. — A doctor was prohibited from seeking redress directly from the Superior Court by the filing of a complaint for claims which actually constituted grievances. *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993).

Reviewing role of courts. — The Comprehensive Merit Personnel Act was intended to create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993).

Exhaustion of administrative appeals.

— A party must, exhaust his or her available administrative appeals before turning to the courts for a review of such a claim; therefore, a plaintiff is required to present his appeal to the Public Employee Relations Board. *Roberts v. District of Columbia Dep't of Cors.*, 855 F. Supp. 417 (D.D.C. 1994).

Jurisdiction of trial courts. — Trial court lacked jurisdiction to hear employee's claim regarding union's alleged breach of the duty of fair representation despite the fact that employee had sought representation from the union pursuant to this act's provisions regarding administrative appeals, rather than pursuant to the provisions regarding grievances under a collective bargaining agreement. *Cooper v. AFCSME, Local 1033*, App. D.C., 656 A.2d 1141 (1995).

Cited in *International Bhd. of Police Officers v. Public Employee Relations Bd.*, 110 WLR 1317 (Super. Ct. 1982); *Fraternal Order of Police MPD Labor Comm. v. Public Employee Relations Bd.*, App. D.C., 516 A.2d 501 (1986); *Washington Teachers' Union Local 6 v. District of Columbia*, 115 WLR 1057 (Super. Ct. 1987); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989); *Teamsters Local Union 1714 v. Public Employee Relations Bd.*, App. D.C., 579 A.2d 706 (1990); *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, App. D.C., 631 A.2d 1205 (1993); *District of Columbia v. Fraternal Order of Police*, App. D.C., 691 A.2d 115 (1997).

§ 1-605.3. Transition procedures.

(a) The property and facilities of the Board of Labor Relations, established pursuant to Commissioner's Order 70-229, shall be transferred to the Public Employee Relations Board as provided in subchapter XXXVII of this chapter.

(b) The personnel and positions assigned to the Board of Labor Relations shall be transferred to the Public Employee Relations Board as provided in subchapter XXXVII of this chapter: Provided, however, that incumbents of positions considered surplus to the needs of the Public Employee Relations Board may be separated in accordance with the provisions of subchapter XXV of this chapter.

(c) All cases pending before the Board of Labor Relations shall be transferred to the Public Employee Relations Board on the effective date of subchapters V and XVIII of this chapter as prescribed by § 1-637.1(i). The Public Employee Relations Board, with respect to any such transferred case, shall take such action as could have been taken by the Board of Labor Relations pursuant to labor-management relations programs as they existed when the case was filed, including those programs referred to in § 1-633.5(a).

(1973 Ed., § 1-335.3; Mar. 3, 1979, D.C. Law 2-139, § 503, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(d), 27 DCR 2632.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

§ 1-605.4. Publication of decisions.

The Board shall cause a copy of each order, decision, or opinion rendered by it to be published in the District of Columbia Register within 60 days of its issuance. (1973 Ed., § 1-335.4; Mar. 3, 1979, D.C. Law 2-139, § 504, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter VI. Office of Employee Appeals.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-606.1. Establishment of the Office of Employee Appeals; composition; qualifications; term of office; vacancies; Chairperson; quorum; appeal procedure; conflict of interest; compensation; appointment of employees; expenditures; removal; exclusivity of position.

(a) There is established an Office of Employee Appeals (hereinafter referred to in this subchapter as the “Office”). The Office shall be composed of 5 members to be appointed by the Mayor in accordance with the provisions of subsection (b) of this section within 60 days of the date this chapter becomes effective as provided in § 1-637.1. Members of the Office shall have demonstrated knowledge concerning personnel management or labor relations, and a reputation for impartiality and integrity in the discharge of their responsibilities. No member shall be eligible for reappointment.

(b) The term of office of each member of the Office shall be 6 years: Except, that: (1) Of those members first appointed, 2 shall serve for 2 years and 3 shall serve for 4 years, respectively, from the date of appointment; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. No member may serve beyond the expiration of his or her term, except that a member serving a term of less than 6 years, who was appointed under clause (1) of this subsection, or a member who is appointed to serve the remainder of an unexpired term of three years or less, who was appointed under clause (2) of this subsection, may be reappointed for a full 6-year term. Appointments to fill vacancies shall be made in accordance with the provisions of subsection (a) of this section. The Mayor shall designate the term of each member at the time of his or her appointment.

(c) The Chairperson of the Office shall be designated by the Mayor. The Chairperson shall be the chief executive of the Office. The Mayor shall from time to time designate 1 member as Vice Chairperson of the Office. During the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson.

(d) Three members of the Office shall constitute a quorum for the transaction of official business and the issuance of rules and regulations. The Office may hear appeals brought before it under this subchapter by a hearing examiner. An appeal from a decision of any such hearing examiner may be taken either to the full Office or to the Superior Court of the District of Columbia at the option of any adversely affected party. If an appeal is taken directly to the Superior Court of the District of Columbia, the decision of a hearing examiner, for the purposes of such appeal, shall be considered as the final decision of the Office. If an appeal is taken from a decision of a hearing examiner to the full Office, the decision of the hearing examiner shall be stayed pending a final decision of the Office. Upon a vote of a majority of its members, the Office may hear de novo all issues of fact or law relating to an appeal of a decision of the hearing examiner, except the Office may decide to consider only the record made before such hearing examiner. A final decision of the full Office, relating to an appeal brought to it from a hearing examiner, shall be appealable to the Superior Court of the District of Columbia. Upon reviewing the final decision of the Office, the Court shall determine if it is supported by substantial evidence.

(e) If at any time any matter comes before the Office in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of the matter under deliberation.

(f) Each member of the Office is entitled to compensation at the rate of \$125 per diem or \$15.62 per hour whichever provides less, while actually in the service of the Office. Should a member serve in excess of 8 hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of 2 per diem payments for any consecutive 24-hour period. Adjustment to such rates of compensation shall be made in accordance with § 1-612.8(b), not to exceed the sum of \$20,000 per annum.

(g)(1) The Chairperson of the Office shall appoint:

- (A) An Executive Director; and
- (B) A General Counsel.

(2) The Executive Director shall report to the Chairperson and shall:

(A) Manage all agency operations and programs that support the work of the Office;

(B) Make all final decisions regarding the performance of the Office's personnel, other than for the Executive Director and General Counsel, and fiscal management, general administrative support services, procurement, and contracts;

(C) Maintain the security of documents and claims; and

(D) Appoint other employees and make whatever expenditures are authorized to carry out the functions of the Office.

(3) The Office shall:

(A) Establish and maintain systems for the timely processing, recording, and control of cases;

(B) Maintain a data base system to record and provide information on the status and disposition of cases;

(C) Prepare and certify official records;

(D) Publish final decisions of the Office;

(E) Provide initial responses to Freedom of Information Act requests;

(F) Manage a formal system for the organization, maintenance, and disposition of Office records;

(G) Formulate and implement programs and policies that provide research assistance to the Office and the public; and

(H) Maintain an updated index of cases, to include among other things subject matter and outcome, to provide research assistance to the Office and the public.

(4) The General Counsel shall:

(A) Provide legal advice to the Office; and

(B) Assist in the enforcement of orders pursuant to § 1-606.9.

(h) The Office shall be considered an independent agency for budgetary and administrative purposes.

(i)(1) The Mayor may remove any member of the Office who engages in any activity prohibited by subsection (j) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall initiate an action, in the Superior Court of the District of Columbia in accordance with the provisions of § 16-3521 et seq., to remove such member.

(2) Any vacancy occurring in the Office shall be filled within 45 days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(3) The procedure provided for in subsections (a) and (b) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. If a vacancy occurs during a term due to removal, resignation or death of a member, the new appointee's term of office is the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsections (a) and (b) of this section.

(j) Any member of the Office who: (1) Violates the provisions of subsection (k) of this section; (2) engages in a conflict of interest in violation of the provisions of subchapter XIX of this chapter; or (3) is convicted of a crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offense, shall be removed from office as provided in this section.

(k) No member of the Office may hold any other position in the District government or any subordinate position in the Office. (1973 Ed., § 1-336.1; Mar. 3, 1979, D.C. Law 2-139, § 601, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(e), 27 DCR 2632; Mar. 16, 1989, D.C. Law 7-200, § 2, 36 DCR 6; May 15, 1990, D.C. Law 8-127, § 2(b), 37 DCR 2093.)

Cross references. — As to compensation for members of the Office of Employee Appeals, see § 1.612.8(c)(2)(B).

As to compensation of the Chairperson of the Office of Employee Appeals, see § 1-612.8(c)(2)(J).

As to procedure for appointment of members of the Office of Employee Appeals, see § 1-633.7.

As to the Employee Deferred Compensation Program, see § 47-3601.

Section references. — This section is referred to in §§ 1-606.11, 1-633.7, and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 7-200. — Law 7-200 was introduced in Council and assigned Bill No. 7-564, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on December 21, 1988, it was assigned Act No. 7-265 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-127. — See note to § 1-606.6.

References in text. — “The date this chapter becomes effective,” referred to in (a), is March 3, 1979.

The “Freedom of Information Act”, referred to in (g)(3)(E), is codified at 5 U.S.C. § 552.

Role of Office in reviewing agency decisions. — Although this subchapter does not define the standards by which the Office of Employee Appeals is to review agency decisions, it is self-evident from both the statute and its legislative history that the OEA is not to substitute its judgment for that of the agency and that its role, like that of its federal counterpart, the Merit Systems Protection Board, is simply to ensure that managerial discretion has been legitimately invoked and properly exercised. *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985).

Standard of review. — The Office of Employee Appeals regulations state that it will uphold an agency decision unless: (1) It is unsupported by substantial evidence; (2) there was harmful procedural error; or (3) it was not in accordance with law or applicable regulations. *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985).

Cited in American Fed’n of Gov’t Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); *Metropolitan Police Dep’t v. Baker*, App. D.C., 564 A.2d 1155 (1989); *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989); *Office of D.C. Controller v. Frost*, App. D.C., 638 A.2d 657 (1994).

§ 1-606.2. Authority; duties of the Office.

(a) The Office shall have, in addition to the authority necessary and proper for carrying out its duties as specified elsewhere in this subchapter, the authority to:

(1) Appoint and remove employees of the Office, subject to applicable provisions of this chapter;

(2) Hear and adjudicate appeals received from District agencies and from employees as provided in this subchapter;

(3) Issue an annual report on the activities of the Office to the Mayor and Council which should include, at a minimum, the following:

(A) The number and nature of cases heard by the Office, and the type of order issued in each case;

(B) The number of appeals heard by Office panels and the disposition of such appeal or type of order issued in each case;

(C) The number of appeals taken to Superior Court of the District of Columbia (both directly and from Office panels) and the disposition of or status of each case; and

(D) A statement of the amount of time taken to reach a final disposition of each case brought before the Office and a statement of the number of backlogged cases, if any;

(4) Compel the appearance of witnesses and production of documents by subpoena, enforceable by the Office in the Superior Court of the District of Columbia;

(5) Issue any rules and regulations necessary to carry out its duties under this chapter; and

(6) Order any agency or employee of the government of the District of Columbia to comply with an order or decision issued by the Office under the authority of this chapter and to enforce compliance with the order or decision.

(b) Any performance rating, grievance, adverse action or reduction-in-force review, which has been included within a collective bargaining agreement under the provisions of subchapter XVIII of this chapter, shall not be subject to the provisions of this subchapter. (1973 Ed., § 1-336.2; Mar. 3, 1979, D.C. Law 2-139, § 602, 25 DCR 5740; May 15, 1990, D.C. Law 8-127, § 2(c), 37 DCR 2093.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-606.11 and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-127. — See note to § 1-606.6.

Office to file report. — Section 4 of D.C. Law 8-127 provided that the Office shall file a report on the operation of the Office with the Mayor and Council by Oct. 31, 1990. The report shall include the following:

(1) The number of appeals filed with the Office;

(2) The number of appeals sent to arbitration;

(3) The number of decisions made by the Office;

(4) The number of backlog appeals;

(5) The costs incurred by the government of the District of Columbia for appeals sent to arbitration; and

(6) The time taken to process all appeals within the Office and by arbitration.

Office of Employee Appeals Amendment Rules and Regulations Approval and Disapproval Resolution of 1992. — Pursuant to Resolution 9-263, effective June 19, 1992, the Council approved, in part, and disapproved, in part, the proposed rules to amend the Office of Employee Appeals rules and regulations.

Cited in Davis v. University of D.C., App. D.C., 603 A.2d 849 (1992).

§ 1-606.3. Appeal procedures.

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIV-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XVII-A of this chapter), or a reduction-in-force (pursuant to subchapter XXV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

(b) In any appeal taken pursuant to this section, the Office shall review the record and uphold, reverse, or modify the decision of the agency. The Office may order oral argument, on its own motion or on motion filed by any party within 15 days, and provide such other procedures or rules and regulations as it deems practicable or desirable in any appeal under this section.

(c) All decisions of the Office shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record, and order: Provided, however, that the Office may affirm a decision without findings of fact and a written decision.

Such decisions shall be published in accordance with the rules and regulations of the Office, and shall be published in the District of Columbia Register. Any decision by a Hearing Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant's filing of the appeal with the Office. Within 45 days, excluding Saturdays, Sundays, and legal holidays, after the appeal is filed with the Office, the Office shall determine whether, in accordance with this section and the Office's own rules, the Office has jurisdiction. Any decision shall include a statement of any further process available to the appellant including, as appropriate, a petition for review or a petition for enforcement and judicial review. Copies of the decision shall be immediately transmitted to the Office and all parties to the appeal, including named parties and intervenors. The initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period. In accordance with § 1-604.4, the Office may promulgate rules to allow a Hearing Examiner a reasonable extension of time if extraordinary circumstances dictate that an appeal cannot be decided within the 120-day period. After issuing the initial decision, the Hearing Examiner shall retain jurisdiction over the case only to the extent necessary to correct the record, rule on a motion for attorney fees, or process any petition for enforcement filed under the authority of the Office. If the Office denies all petitions for review, the initial decision shall become final upon the issuance of the last denial. If the Office grants a petition for review, the subsequent decision of the Office shall be the final decision of the Office unless the decision states otherwise. Administrative remedies are considered exhausted when a decision becomes final in accordance with this section.

(d) Any employee or agency may appeal the decision of the Office to the Superior Court of the District of Columbia for a review of the record and such Court may affirm, reverse, remove, or modify such decision, or take any other appropriate action the Court may deem necessary. (1973 Ed., § 1-336.3; Mar. 3, 1979, D.C. Law 2-139, § 603, 25 DCR 5740; May 15, 1990, D.C. Law 8-127, § 2(d), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(d)(1), 45 DCR 2464.)

Section references. — This section is referred to in § 1-606.11.

Effect of amendments. — D.C. Law 12-124 rewrote (a).

Emergency act amendments. — For temporary amendment of section, see § 101(d) of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Act 12-326, April 1, 1998, 45 DCR 2464).

Section 401(a) of D.C. Act 12-326 provided for the application of § 101(d), (h), (k), (l), (m) through (u), (w) and (y).

For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-127. — See note to § 1-606.6.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(d) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law."

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2861-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

Due process. — The appeal procedures provided for in §§ 1-617.2(b) and 1-606.3(d) incorporate the basic element of due process: the opportunity to be heard by a neutral decision-maker. *UDC Chairs Chapter v. Board of Trustees*, 56 F.3d 1469 (D.C. Cir. 1995).

Notice of right to appeal. — The D.C. Code and the rules and regulations of the Office of Employee Appeals require that the Metropolitan Police Department inform an aggrieved employee of the right to appeal to the OEA. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

Right to appeal reduction in force decision. — The Office of Employee Appeals (OEA) has jurisdiction to hear appeals of all District employees for adverse actions and grievances, but a reduction in force (RIF) action is not included in either of these actions, and educational employees of the University of the District of Columbia contesting RIF actions are expressly excluded from the jurisdiction of the OEA. *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992).

Even though the Office of Employee Appeals cannot review the claims of an employee of the University of the District of Columbia contesting a reduction in force, the employee is not without adequate remedy, because he may invoke the general equitable jurisdiction of the Superior Court so that he would be afforded a right to a hearing. *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992).

Pursuit of federal claims. — The D.C. Office of Employee Appeals (OEA) appeal process, with the attendant review in the D.C. Superior Court and D.C. Court of Appeals, is judicial in nature, and the District has an important interest in its own ability to implement reductions in the size of its workforce; however, the OEA proceeding does not present an adequate forum in which appellant can fully and fairly pursue his federal claims, particularly when the D.C. system cannot grant appellant the full relief requested in connection with his federal claims. *Bridges v. Kelly*, 84 F.3d 470 (D.C. Cir. 1996).

Appeal to trial court. — Police officer's complaint challenging the failure of the District of Columbia Metropolitan Police Department to promote her to the rank of sergeant was subject to the processes of the Comprehensive Merit Personnel Act, and proceedings before the Office of Employee Appeals must run their course before she would be entitled to further appropriate review and relief in trial court. *Taggart-*

Wilson v. District of Columbia, App. D.C., 675 A.2d 28 (1996).

Party may not bifurcate appeal process. — A party adversely affected by a decision is free to choose either avenue of review, but is not permitted to bifurcate the appeal process by presenting some issues to the full Office of Employment Appeals and others to the Superior Court after the administrative judge's decision becomes final. *Hutchinson v. District of Columbia Office of Employee Appeals*, App. D.C., 710 A.2d 227 (1998).

Exhaustion of administrative remedies. — Where an employee fails to file a grievance regarding the classification of his position, but instead files an action in the courts, the action will be dismissed for failure to exhaust all administrative remedies. *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997).

Denial of administrative sick leave. — A decision of the Metropolitan Police Department denying administrative sick leave is a grievance and as such, it must be appealed to the Office of Employee Appeals prior to judicial review. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

Probationary employee. — A probationary employee had no right to have his discharge reviewed by the Office of Employee Appeals (OEA) which has jurisdiction over "adverse actions" (which includes discharges) affecting a career service employee who is not serving a probationary period. *Davis v. Lambert*, 119 WLR 305 (Super. Ct. 1991).

Role of Office in reviewing agency decisions. — Although this subchapter does not define the standards by which the Office of Employee Appeals is to review agency decisions, it is self-evident from both the statute and its legislative history that the OEA is not to substitute its judgment for that of the agency and that its role, like that of its federal counterpart, the Merit Systems Protection Board, is simply to ensure that managerial discretion has been legitimately invoked and properly exercised. *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985).

Burden of proof. — Once the University of the District of Columbia made a prima facie showing that it followed proper procedures and considered the correct subjective criteria, the burden should have shifted to the applicant for tenure to show her entitlement to promotion. *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989).

Standard of review. — The Office of Employee Appeals regulations state that it will uphold an agency decision unless: (1) It is unsupported by substantial evidence; (2) there was harmful procedural error; or (3) it was not in accordance with law or applicable regulations. *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985).

Decision by Office to reinstate dismissed employee constituted abuse of discretion. — See *Stokes v. District of Columbia*, App. D.C., 502 A.2d 1006 (1985).

Cited in *Meadows v. Palmer*, 775 F.2d 1193 (D.C. Cir. 1985); *Hairston v. District of Columbia*, 638 F. Supp. 198 (D.D.C. 1986); *Martin v. Malhoyt*, 830 F.2d 237 (D.C. Cir. 1987); *District of Columbia v. Hunt*, App. D.C., 520 A.2d 300 (1987); *Stevens v. Stover*, 702 F. Supp. 302

(D.D.C. 1988); *Bufford v. District of Columbia Pub. Sch.*, App. D.C., 611 A.2d 519 (1992); *Hessey v. Burden*, App. D.C., 615 A.2d 562 (1992); *Office of D.C. Controller v. Frost*, App. D.C., 638 A.2d 657 (1994); *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997); *Kidd v. District of Columbia Office of Employee Appeals*, App. D.C., 698 A.2d 1018 (1997).

§ 1-606.4. Agency hearing procedures.

(a) The personnel authority shall establish internal rules and regulations, not inconsistent with the procedures of this subchapter, for conducting hearings affecting individual employees whose removal is proposed or effected for cause pursuant to subchapter XVII of this chapter.

(b) The personnel authority shall provide for 15 days advance notice in writing stating the specific reasons for the proposed action prior to an adverse action against an employee for cause that results in removal, a reduction in grade, or a suspension of 10 days or more. This provision may be waived by the agency head if the employee's conduct threatens the integrity of government operations, constitutes an immediate hazard to the agency, to other employees of the government, or to the employee, or to the public health, safety, or welfare.

(c) The personnel authority shall provide that any employee whose removal from service, reduction in grade, or suspension of 10 days or more is proposed, or whose removal is effected pursuant to § 1-617.51(5) have the following rights:

- (1) To review any material upon which the proposal or action is based;
- (2) To prepare a written response to the notice provided in subsection (b) of this section, including affidavits and other documentation;
- (3) To be represented by an attorney or other representative; and
- (4) To be heard, as provided in subsection (d) of this section in the case of a removal.

(d) The personnel authority shall provide an administrative review by a hearing officer appointed by the agency head of a proposed removal action or a removal action pursuant to § 1-617.51(5) including the employee's response, if any, and may provide for an adversary hearing and the confrontation of witnesses.

(e) The personnel authority shall provide the employee with a written decision following the review provided in subsection (d) of this section, and shall advise each employee of his or her right to appeal to the Office as provided in this subchapter. (1973 Ed., § 1-336.4; Mar. 3, 1979, D.C. Law 2-139, § 604, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(d)(2), 45 DCR 2464.)

Section references. — This section is referred to in § 1-606.5.

Effect of amendments. — D.C. Law 12-124 rewrote the section.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(d) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

“Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998, (D.C. Law 12-124; 45 DCR 2464) are enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

Notice of right to appeal. — The D.C. Code and the rules and regulations of the Office of Employee Appeals require that the Metropolitan Police Department inform an aggrieved

employee of the right to appeal to the OEA. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

Remand where notice not given. — Where board of education fails to inform dismissed teacher of her right to appeal board's decision to the Office of Employee Appeals (OEA), with the result that teacher fails to exhaust her administrative remedies, and appeals board's decision directly to the Superior Court, the proper procedure is to remand, without prejudice, for review by OEA. *Montgomery v. District of Columbia*, App. D.C., 598 A.2d 162 (1991).

Denial of administrative sick leave. — A decision of the Metropolitan Police Department denying administrative sick leave is a grievance and as such, it must be appealed to the Office of Employee Appeals prior to judicial review. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

Cited in *Grant v. District of Columbia*, App. D.C., 545 A.2d 1262 (1988).

§ 1-606.5. Authority of Council to issue rules mandated by § 1-606.4(a).

The officers of the Council of the District of Columbia may issue rules, subject to approval by the Council of the District of Columbia, concerning review of central staff employee personnel appeals as mandated in § 1-606.4(a). (Oct. 24, 1981, D.C. Law 4-48, § 6, 28 DCR 4276; Apr. 30, 1988, D.C. Law 7-104, § 31, 35 DCR 147.)

Legislative history of Law 4-48. — Law 4-48 was introduced in Council and assigned Bill No. 4-176, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 30, 1981 and July 14,

1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-83 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — See note to § 1-604.8.

§ 1-606.6. Mediation and settlement.

(a) The Office may, in its discretion, develop a mediation program.

(b) Settlement of the dispute may be raised by the Hearing Examiner with the parties at any time. If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the Hearing Examiner shall dismiss the appeal with prejudice. (Mar. 3, 1979, D.C. Law 2-139, § 605, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(d)(3), 45 DCR 2464.)

Section references. — This section is referred to in § 1-606.11.

Effect of amendments. — D.C. Law 12-124 added (a); and designated the previously existing text as (b).

Legislative history of Law 8-127. — Law

8-127 was introduced in Council and assigned Bill No. 8-482, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15,

1990, it was assigned Act No. 8-180 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — See note to § 1-603.1

Applicability of § 101(d) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

“Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998, (D.C. Law 12-124; 45 DCR 2464) are enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2861-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

§ 1-606.7. Arbitration.

(a) The parties may agree in writing to arbitrate the dispute rather than have the Office adjudicate the case. An agreement by the parties to arbitrate the dispute must be reached within 30 days, excluding Saturdays, Sundays, and legal holidays, of the date the appeal was filed with the Office. Failure to reach an agreement to arbitrate shall result in the appeal being adjudicated by the Office.

(b) If the parties agree to arbitrate the dispute, the Office shall immediately forward the matter to the American Arbitration Association (“AAA”). The dispute shall be arbitrated in accordance with the Voluntary Labor Arbitration Rules of the AAA, except that a hearing on the dispute shall be held no later than 60 days from the date the dispute is referred to AAA.

(c) When an employee who is a party to the dispute is not a member of a collective bargaining unit, the District shall bear the filing fee and the costs of the arbitration, including the arbitrator’s fee. When an employee who is a party to the dispute is a member of a collective bargaining unit, the terms of the collective bargaining agreement and § 1-617.3(d) shall govern with respect to the filing fee and the costs of arbitration.

(d) The decision of the arbitrator may be appealed to the Superior Court of the District of Columbia within 30 days of issuance of the decision. The Court shall vacate the arbitration award if:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was evident partiality by an arbitrator, corruption by an arbitrator, or misconduct prejudicing the rights of any party;
- (3) The arbitrator exceeded his or her authority;
- (4) The arbitrator refused to postpone the hearing upon sufficient cause being shown, refused to hear evidence material to the controversy, or otherwise conducted the hearing in a manner to prejudice substantially the rights of a party;
- (5) The award was not in accordance with applicable law, regulations, or rules; or
- (6) There was no agreement to arbitrate. (Mar. 3, 1979, D.C. Law 2-139, § 606, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in § 1-606.11.

Legislative history of Law 8-127. — See note to § 1-606.6.

§ 1-606.8. Attorney fees.

The Hearing Examiner or the Arbitrator may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice. (Mar. 3, 1979, D.C. Law 2-139, § 607, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in § 1-606.11.

Legislative history of Law 8-127. — See note to § 1-606.6.

§ 1-606.9. Enforcement of order.

If the Office determines that the respondent has not complied with an order within 30 calendar days of service of the order, the Office shall certify the matter to the General Counsel and any agency that may be appropriate for enforcement. (Mar. 3, 1979, D.C. Law 2-139, § 608, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in §§ 1-606.1 and 1-606.11.

Legislative history of Law 8-127. — See note to § 1-606.6.

§ 1-606.10. Public hearings.

(a) Hearings shall be open to the public. However, the Hearing Examiner may order a hearing or any part of a hearing closed if to do so would be in the best interest of the appellant, a witness, the public, or any other affected person. An order closing the hearing shall set forth the reasons for the Hearing Examiner's decision. Any objection to closing the hearing shall be made part of the record.

(b) A vote or decision on the appeal by the Office shall be made in public, pursuant to § 1-1504. (Mar. 3, 1979, D.C. Law 2-139, § 609, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in § 1-606.11.

Legislative history of Law 8-127. — See note to § 1-606.6.

§ 1-606.11. Rules.

Within 45 days of May 15, 1990, the Office shall, pursuant to § 1-606.2, issue proposed rules to implement the provisions of §§ 1-604.6, 1-606.1, 1-606.3(c), and 1-606.6 to 1-606.10. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. (Mar. 3, 1979, D.C. Law 2-139, § 610, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Temporary addition of section. — Section 2(b) of D.C. Law 9-47 added a new section to read as follows:

“§ 1-606.12. Temporary Panel of the Office of Employee Appeals.

(a) There is established a Temporary Panel

of the Office of Employee Appeals in addition to, and independent of, the existing Office of Employee Appeals. The Temporary Panel shall have exclusive authority to adjudicate appeals by employees separated pursuant to section 2405, in accordance with existing rules of procedure of the Office of Employee Appeals. The Temporary Panel shall consist of 3 persons appointed by the Mayor with the approval of the Council by resolution which shall take effect immediately upon adoption. The Temporary Panel shall not be subject to §§ 1-606.1 through 1-606.4 and §§ 1-606.6 through 1-606.11 (relating to the powers and functions of the Office of Employee Appeals) except to the extent that these sections relate to the adjudication of appeals by the Temporary Panel pursuant to section 2405 of this act.

(b) Any employee or agency may appeal the decision of the Temporary Panel to the Superior Court of the District of Columbia for a review of the record and such Court may affirm, reverse, remove or modify such decision, or take any other appropriate action the Court may deem necessary.

(c) Members of the Temporary Panel shall be paid compensation not to exceed \$250 a day.

(d) The Mayor shall make available to the Temporary Panel from funds appropriated for Governmental Direction and Support such office space, equipment, and staff, including hearing examiners and necessary support staff, as the Temporary Panel shall require."

Temporary extension of authority. — Section 2 of D.C. Law 9-137 extended the existence and authority of the Temporary Panel of the Office of Employee Appeals.

Section 3(b) of D.C. Law 9-137 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Temporary Panel of the Office of Employee Appeals Extension Act of 1992, whichever occurs first.

Temporary extension of authority and repeal of Law 10-6. — Section 2 of D.C. Law 10-6, effective July 23, 1993, extended the existence of the Temporary Panel of the Office of

Employee Appeals; however, § 3 of D.C. Law 10-83, effective March 19, 1994, repealed D.C. Law 10-6 (the Temporary Appeals Panel Extension Temporary Act of 1993).

Section 3(b) of D.C. Law 10-6 provided that the act shall expire on the 225th day of its having taken effect or upon the completion of all pending cases before the Temporary Panel, whichever occurs first.

Section 4 of D.C. Law 10-83 provided that the act shall apply after November 30, 1993.

Section 5(b) of D.C. Law 10-83 provided that the act shall expire on the 225th day of its having taken effect.

For temporary extension of the life of the Temporary Appeals Panel so that the Panel can bring all of its pending cases to closure, see § 2 of the Temporary Appeals Panel Extension Emergency Amendment Act of 1993 (D.C. Act 10-19, April 23, 1993, 40 DCR 2861).

For temporary repeal of the Temporary Appeals Panel Extension Temporary Act of 1993, effective July 23, 1993 (D.C. Law 10-6; 40 DCR 5630), see § 3 of the Comprehensive Merit Personnel Act Temporary Panel of the Office of Employee Appeals Emergency Amendment Act of 1993 (D.C. Act 10-150, November 17, 1993, 40 DCR 8462).

Section 4 of D.C. Act 10-150 provides for application of the act.

Legislative history of Law 8-127 — See note to § 1-606.6.

Legislative history of Law 9-47 — Law 9-47 was introduced in Council and assigned Bill No. 9-270. The Bill was adopted on first and second readings on July 2, 1991, and October 1, 1991, respectively. Signed by the Mayor on October 15, 1991, it was assigned Act No. 9-85 and transmitted to both Houses of Congress for its review.

Office of Employee Appeals Amendment Rules and Regulations Approval and Disapproval Resolution of 1992. — Pursuant to Resolution 9-263, effective June 19, 1992, the Council approved, in part, and disapproved, in part, the proposed rules to amend the Office of Employee Appeals rules and regulations.

Subchapter VII. Equal Employment Opportunity.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-607.1. Affirmative action; exercise of religion.

(a) The Council reaffirms its intent that the objectives of the Affirmative Action in District Government Employment Act, as amended (D.C. Code, § 1-507) be carried out.

(b) Each agency shall make reasonable accommodations for the free exercise of religion by its employees, and may adjust work schedules unless such adjustment would result in a substantial disruption of District business.

(c) If an employee's religious beliefs require the employee to take time off from work during certain periods of the workday or workweek, the employee may elect to make up the time off, rather than to charge the time off to leave, in accordance with the procedures established under subsections (d) and (e) of this section.

(d) An employee who makes an election pursuant to subsection (c) of this section shall, if the need to take time off is foreseeable, request an adjustment of his or her work schedule and obtain supervisory approval of the adjustment at least 10 days before taking time off from work. A request to adjust a work schedule may be disapproved if it is demonstrated that the adjustment would clearly interfere with the efficient conduct of the activities of the entity of the District government for which the employee works.

(e) Notice of an employee's opportunity to obtain a religious accommodation shall be provided to the employee at the time the employee accepts appointment with the District government.

(f) Nothing in this section shall be construed to limit the use of other forms of leave authorized by the District government or to require a supervisor to allow an employee the opportunity to work more than 40 hours in a given week to make up for the time taken off for the religious accommodation. (1973 Ed., § 1-337.1; Mar. 3, 1979, D.C. Law 2-139, § 701, 25 DCR 5740; Mar. 2, 1991, D.C. Law 8-193, § 2, 37 DCR 6728.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-193. — Law 8-193 was introduced in Council and assigned Bill No. 8-384, which was referred to the Committee on Housing and Economic Development.

The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 17, 1990, it was assigned Act No. 8-256 and transmitted to both Houses of Congress for its review.

§ 1-607.2. Special provisions for the physically handicapped and the developmentally disabled.

The Mayor may develop rules and regulations which authorize the inquiry into bona fide job-related qualifications which may affect persons with physical handicaps or developmental disabilities, prior to appointing such individuals under the authority of § 1-610.4(2). Physically handicapped or developmentally disabled persons who apply for positions under the authority of subchapters VIII and IX of this chapter may be examined to assure that their level of skills is sufficient to meet minimal job qualifications. (1973 Ed., § 1-337.2; Mar. 3, 1979, D.C. Law 2-139, § 702, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-607.3. Veterans preference in employment.

(a) For appointment under the provisions of subchapters VIII and IX of this chapter, persons who have served on active duty in the armed forces of the United States for more than 180 consecutive days, not including service under honorable conditions as provided under § 511(d) of Title 10 of the United

States Code and have separated from the armed forces under honorable conditions may receive an additional 5 points on any register established under the authority of subchapters VIII and IX of this chapter.

(b) A person entitled to preference points, as provided in subsection (a) of this section, shall receive an additional 5 points if he or she has separated from the armed forces under honorable conditions, and has established the presence at the time of appointment of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public law administered by the Veterans Administration or a military department.

(c) Any employee of the District government who, on January 1, 1979, was entitled to veterans preference under federal law, shall continue to be entitled to such veterans preference under this chapter.

(d) The Mayor is authorized to develop procedures for the consideration of granting veterans preference, as provided in this section, to persons who served in the armed forces but were less than honorably discharged. Such persons may be entitled to the preference afforded by this section at the time of initial appointment if they show, to the satisfaction of the Mayor, that they have been discriminated against in violation of those rights guaranteed in § 1-601.1(2) and this subchapter. No appeal shall be available to any person not afforded a veterans preference under the provisions of this subsection.

(e) Except for the appointment preferences provided in subsections (h), (i), (j), and (k) of this section, no person shall receive any appointment preference after 5 years from the date of separation from the armed forces of the United States.

(f) No person entering the armed forces of the United States after October 14, 1976, shall receive any preference unless the person served in the armed forces of the United States during time of war.

(g) No person retiring from the armed forces of the United States shall receive any preference.

(h) The unmarried widow or widower of a veteran shall be accorded the same preference in appointment as would be accorded to her or him in the federal service pursuant to 5 U.S.C. §§ 2108(3)(D) and 3309(1).

(i) The wife or husband of a service-connected disabled veteran shall be accorded the same preference in appointment as would be accorded to her or him in the federal service pursuant to 5 U.S.C. §§ 2108(3)(E) and 3309(1).

(j) A person classified as 30 percent or more disabled under subsection (b) of this section shall receive an appointment preference as provided in that subsection.

(k) A person who served during the Vietnam conflict, who has a discharge of other than dishonorable, shall receive an appointment preference for a period not to exceed 10 years from May 19, 1982. (1973 Ed., § 1-337.3; Mar. 3, 1979, D.C. Law 2-139, § 703, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(f), 27 DCR 2632; May 19, 1982, D.C. Law 4-107, §§ 2, 3, 29 DCR 1410.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 4-107. — Law 4-107 was introduced in Council and assigned Bill No. 4-294, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on January 26, 1982 and March 9, 1982, respectively. Signed by the Mayor on March 26, 1982, it was assigned Act No. 4-168 and transmitted to both Houses of Congress for its review.

References in text. — “Section 511(d) of

Title 10 of the United States Code,” referred to in (a), was recodified as sections 3571 and 8571 of Title 10. These sections were subsequently repealed, and present similar provisions may be found at 10 U.S.C. § 741.

§ 1-607.4. Employee selection procedures — Statement of purpose.

The Council believes that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by this subchapter. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may aid significantly in the development and maintenance of an efficient work force and in the utilization and conservation of human resources. (1973 Ed., § 1-337.4; Mar. 3, 1979, D.C. Law 2-139, § 704, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-607.5. Same — Relation to job required.

The selection procedures utilized shall be job related to minimize or eliminate discrimination. (1973 Ed., § 1-337.5; Mar. 3, 1979, D.C. Law 2-139, § 705, 25 DCR 5740.)

Section references. — This section is referred to in § 1-607.6.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-607.6. Same — Evidence of validity.

(a) Each person utilizing a selection procedure in choosing among candidates for a position shall have available for inspection evidence that the procedure does not violate § 1-607.5. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates.

(b) Evidence of selection procedure validity should consist of evidence demonstrating that the procedure is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated. (1973 Ed., § 1-337.6; Mar. 3, 1979, D.C. Law 2-139, § 706, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-607.7. Sex discrimination in benefit programs.

No benefit program shall be denied to any District employee on account of sex. (1973 Ed., § 1-337.7; Mar. 3, 1979, D.C. Law 2-139, § 707, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-607.8. Specific standards authorized.

Specific standards to carry out the purposes of this subchapter shall be adopted by the Mayor. (1973 Ed., § 1-337.8; Mar. 3, 1979, D.C. Law 2-139, § 708, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter VII-A. Residency Requirement.

§ 1-607.51. Residency requirement.

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 751, as added July 24, 1998, D.C. Law 12-138, § 2(c), 45 DCR 2972; Oct. 21, 1998, Pub. L. 105-277, § 153, 112 Stat. 2681-146.)

Editor's notes. — Section 2(c) of D.C. Law 12-138 had added this section, effective July 24, 1998; this section was subsequently repealed by Pub. L. 105-277, § 153, effective Oct. 21, 1998.

Subchapter VIII. Career Service.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-608.1. Creation of Career Service.

(a) The Mayor shall issue rules and regulations governing employment, advancement, and retention in the Career Service which shall include all persons appointed to positions in the District government, except persons appointed to positions in the Excepted, Executive, Educational, Management Supervisory, or Legal Service. The Career Service shall also include, after January 1, 1980, all persons who are transferred into the Career Service pursuant to the provisions of subsection (c) of § 1-602.4. The rules and regulations governing Career Service employees shall be indexed and cross referenced to the incumbent classification system and shall provide for the following:

- (1) A positive recruitment program designed to meet current and projected personnel needs;
- (2) Open competition for initial appointment to the Career Service;
- (3) Examining procedures designed to achieve maximum objectivity, reliability, and validity through a practical assessment of attributes necessary to successful job performance and career development as provided in subchapter VII of this chapter;

(4) Appointments to be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements, from appropriate lists established on the basis of the provisions of paragraphs (1), (2), and (3) of this subsection with appropriate regard for affirmative action goals and veterans preference as provided in subchapter VII of this chapter;

(5) Appointments made without time limitation in accordance with paragraph (4) of this subsection, as permanent Career Service status appointments upon satisfactory completion of a probationary period of at least 1 year;

(6) Temporary, term, and other time-limited appointments, in appropriate cases, which do not confer permanent status but are to be made, insofar as practicable, in accordance with paragraph (4) of this subsection, except that such appointments to positions at the DS-12 level or equivalent or below may be made non-competitively;

(7) Appointments to continuing positions (in the absence of lists of eligibles), which do not confer permanent status, subject to meeting minimum qualification standards and subject to termination as soon as lists of qualified eligibles for permanent appointment can be established in accordance with paragraph (4) of this subsection;

(8) Emergency appointments for not more than 30 days to provide for maintenance of essential services in situations of natural disaster or catastrophes where normal employment procedures are impracticable;

(9) Promotions of permanent employees, giving due consideration to demonstrated ability, quality, and length of service;

(10) Reinstatements, reassignments, and transfers of employees with permanent status;

(11) Establishment of programs, including trainee programs, designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities for members of disadvantaged groups, handicapped persons, women, and other appropriate target groups. These programs may provide for permanent appointments to trainee or similar positions through competition limited to these persons;

(12) Reduction-in-force procedures, with:

(A) A prescribed order of separation based on tenure of appointment, length of service, including creditable federal and military service, District residency, veterans preference, and officially documented work performance;

(B) Priority reemployment consideration for employees separated;

(C) Consideration of job sharing and reduced hours; and

(D) Employee appeal rights; and

(13) Separations for cause, which shall be subject to the adverse action and appeal procedures provided for in subchapter XVII of this chapter.

(b) Selections to the Career Service shall be made in accordance with equal employment opportunity principles as set forth in subchapter VII of this chapter.

(c)(1) For the purpose of this subsection, "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece,

husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.

(3) A public official who appoints, employs, promotes, or advances, or advocates such appointment, employment, promotion, or advancement of any individual appointed in violation of this subsection shall reimburse the District for any such funds improperly paid to such individual.

(4) The Mayor may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this subsection.

(d) The Mayor may issue separate rules and regulations concerning the personnel system affecting members of the uniform services of the Police and Fire Departments which may provide for a probationary period of at least 1 year. Other such separate rules and regulations may only be issued to carry out provisions of this chapter which accord such member of the uniform services of the Police and Fire Departments separate treatment under this chapter. Such separate rules and regulations are not a bar to collective bargaining during the negotiation process between the Mayor and the recognized labor organizations for the Metropolitan Police and Fire Departments, but shall be within the parameters of § 1-618.8.

(e)(1) Notwithstanding any provision of § 1-2501 et seq., an applicant for District government employment in the Career Service who is a bona fide resident of the District at the time of application shall be given a hiring preference over a non-resident applicant. This preference shall be in addition to, and not instead of, qualifications established for the position.

(2) An applicant claiming a hiring preference shall submit proof of bona fide residency in a manner determined by the Mayor pursuant to paragraph (5) of this subsection. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 5 consecutive years from the effective date of hire. Failure to maintain bona fide District residency for the consecutive 5-year period shall result in forfeiture of employment.

(3) Any individual hired under a previous residency law who was subject to a residency requirement shall be treated as if the individual claimed a preference and was hired pursuant to the Residency Preference Amendment Act of 1988.

(4) In reductions-in-force, a resident District employee shall be preferred for retention and reinstatement of employment over a non-resident District

employee. For purposes of this paragraph only, a non-resident District employee hired prior to January 1, 1980, shall be considered a District resident. When the provisions of this paragraph conflict with an effective collective bargaining agreement, the terms of the collective bargaining agreement shall govern.

(5) A District employee hired in the Career Service prior to March 16, 1989, who elects to apply for a competitive promotion in the Career Service and to claim a preference, shall be bound by the provisions of paragraph (2) of this subsection.

(6) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the preference system established by this subsection. The proposed rules shall be submitted to the Council no later than February 1, 1989, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(7)(A) Except as provided in subparagraph (B), the Mayor may not require an individual to reside in the District of Columbia as a condition of employment in the Career Service.

(B) The Mayor shall provide notice to each employee in the Career Service of the provisions of this subsection that require an employee claiming a residency preference to maintain District residency for 5 consecutive years, and shall only apply such provisions with respect to employees claiming a residency preference on or after March 16, 1989.

(f) Repealed. (1973 Ed., § 1-338.1; Mar. 3, 1979, D.C. Law 2-139, § 801, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(a), 25 DCR 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(g), 27 DCR 2632; May 22, 1981, D.C. Law 4-2, § 2(a)-(c), 28 DCR 2586; Apr. 3, 1982, D.C. Law 4-92, § 2(a)-(c), 29 DCR 745; Aug. 1, 1985, D.C. Law 6-15, § 7(a), 32 DCR 3570; Mar. 16, 1989, D.C. Law 7-203, § 2(a), 36 DCR 450; Nov. 21, 1989, 103 Stat. 1277, Pub. L. 101-168, § 110B(b)(1); June 10, 1998, D.C. Law 12-124, § 101(e), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(a), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153; Apr. 20, 1998, D.C. Law 12-260, § 2(c), 46 DCR 1318.)

Cross references. — As to the Department of Transportation Hearing Examiner Act of 1983, see § 40-604.

Section references. — This section is referred to in §§ 1-602.1, 1-602.2, 1-602.4, 1-609.59, 1-610.6, 1-625.2, and 40-604.

Effect of amendments. — D.C. Law 12-124, substituted “Excepted, Executive, Educational, or Management Supervisory Service” for “Excepted, Executive or Educational Service” in the introductory language of (a); inserted “term” following “Temporary” and inserted “except that such appointments to positions at the DS-12 level or equivalent or below may be made non-competitively” in (a)(6); and inserted “District residency” in (a)(12)(A).

D.C. Law 12-138 added (f).

D.C. Law 12-260 substituted “Management

Supervisory, or Legal” for “or Management Supervisory” in the first sentence of (a).

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-14. — Law 3-14 was introduced in Council and assigned Bill No. 3-114, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 4-2. — Law 4-2 was introduced in Council and assigned Bill No. 4-85, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 24, 1981 and March 10, 1981, respectively. Signed by the Mayor on March 20, 1981, it was assigned Act No. 4-12 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-92. — Law 4-92 was introduced in Council and assigned Bill No. 4-373, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 12, 1982 and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-150 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-203. — Law 7-203 was introduced in Council and assigned Bill No. 7-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-274 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-138. — Law 12-138, the "Residency Requirement Reinstatement Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-137, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 22, 1998, it was assigned Act No. 12-340 and transmitted to both Houses of Congress for its review. D.C. Law 12-138 became effective on July 24, 1998.

Legislative history of Law 12-260. — See note to § 1-604.4.

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277, 112 Stat. 2681-146, repealed D.C. Law 12-138, which had added a subsection (f) to this section.

References in text. — The "Residency Preference Amendment Act of 1988", referred to in subsection (e)(3), is D.C. Law 7-203.

Withdrawal of funds absent adoption of preference system that does not preclude hiring noncity residents. — Section 141 of Pub. L. 100-462, the District of Columbia Appropriations Act, 1989, provided that "(a) If by May 1, 1989, the District of Columbia government has not adopted, and implemented no later than September 30, 1989, a preference system that does not preclude the hiring of noncity residents, none of the funds provided or otherwise made available by this Act may be used to pay the salary or expenses of any officer, employee, or agent who is engaged in implementing, administering, or enforcing a District of Columbia residency requirement with respect to employees of the Government of the District of Columbia.

(b) After the date of enactment of this section, the District shall not dismiss any employees currently facing adverse job action for failure to comply with the residency requirement."

Application for employment, promotions, and reductions in force. — Section 110B(a) of Pub. L. 101-168, the District of Columbia Appropriations Act, 1990, provided that:

"(1) IN GENERAL. — The rules issued pursuant to the amendments to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 made by the Residency Preference Amendment Act of 1988 (D.C. Law 7-203) shall include the provisions described in paragraph (2).

(2) DESCRIPTION OF POLICIES. —

(A) POLICY REGARDING APPLICATION FOR EMPLOYMENT. — The Mayor of the District of Columbia may not give an applicant for District of Columbia government employment in the Career Service who claims a District residency preference more than a 5 point hiring preference over an applicant not claiming such a preference, and, in the case of equally qualified applicants, shall give an applicant claiming such a preference priority in hiring over an applicant not claiming such a preference.

(B) POLICY REGARDING PROMOTIONS AND REDUCTIONS IN FORCE FOR CAREER SERVICE EMPLOYEES. — In calculating years of service for the purpose of implementing a reduction-in-force, the Mayor may not credit an employee in the Career Service who claims a District residency preference with more than 1 year of additional service credit, and in the case of equally qualified employees, shall give an employee claiming such a preference priority in promotion over an employee not claiming such a preference.

(C) INDIVIDUALS SUBJECT TO PROVISIONS. — The amendments to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 made by the Residency Preference Amendment Act of 1988 shall apply only with respect to individuals claiming a District residency preference or applying for employment

with the District of Columbia on or after March 16, 1989.”

Appropriations unauthorized for implementation of personnel lottery. — Section 121 of Pub. L. 101-168, the District of Columbia Appropriations Act, 1990, provided that none of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of fire fighters or police officers.

Disapproval of group exemption from residency requirement for electrical workers in the Department of Public Works. — Pursuant to Resolution 7-73, the “Exemption From the Residency Requirement for Electrical Workers in the Department of Public Works Disapproval Resolution of 1987,” effective June 2, 1987, the Council disapproved the group exemption from the residency requirement for electrical works in the Department of Public Works posed by the Mayor.

Disapproval of proposed rules to implement residency preference system for employment in Career Service. — Pursuant to Resolution 8-56, the “Residency Preference

System for Employment in the Career Service Rules Disapproval Resolution of 1989”, effective May 30, 1989, the Council disapproved the proposed rules to implement the residency preference system to give District of Columbia residents a preference for District of Columbia government employment in the Career Service.

Career Service employee. — Though employee supervised relatively few clerical employees in course of predominantly procurement activities, he is not classified within the Career Service category as a matter of law. *Hoage v. Board of Trustees*, App. D.C., 714 A.2d 776 (1998).

Cited in American Fed’n of Gov’t Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); *Allen v. District of Columbia Police & Firefighters’ Retirement & Relief Bd.*, App. D.C., 560 A.2d 492 (1989); *Cocome v. District of Columbia Lottery & Charitable Games Control Bd.*, App. D.C., 560 A.2d 547 (1989); *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992); *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

Subchapter IX. Educational Service.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-609.1. Creation of the Educational Service.

(a) For the purpose of this subchapter, the term “Boards” means the District of Columbia Board of Education for educational employees of the Board of Education and the Board of Trustees of the University of the District of Columbia for educational employees of the University of the District of Columbia.

(b) The Boards shall issue rules and regulations governing employment, advancement, and retention in the Educational Service, which shall include all educational employees of the District of Columbia employed by the Boards. The rules and regulations shall be indexed and cross referenced as to the incumbent classification and compensation system.

(1) *University of the District of Columbia.* — In keeping with the purpose of this chapter, the Board of Trustees of the University of the District of Columbia shall issue rules and regulations embodying principles of merit and equal employment governing, among others, appointment, promotion, retention, reassignment, professional development and training, classification, and salary administration (except as provided in § 1-602.3), employee benefits, reduction-in-force, adverse action, grievances, and appeals, provided that such rules and regulations concerning adverse actions and regulations covering adverse actions and appeals shall be consistent with subchapters V, VI, VII, XVII and XVIII of this chapter.

(2) *The Board of Education.* — The Board of Education shall issue rules and regulations which shall provide for the following:

(A) A positive recruitment program designed to meet current and projected personnel needs;

(B) Open competition for initial appointment to the service;

(C) Appointment procedures designed to achieve maximum objectivity, reliability, and validity through a practical assessment of attributes necessary to successful job performance and career development as provided in subchapter VII of this chapter;

(D) Appointments to be made on the basis of merit by selection from the highest qualified available eligible persons based on specific job requirements, from appropriate lists or files established on the basis of the provisions of subparagraphs (A), (B), and (C) of this paragraph with appropriate regard for affirmative action goals and veterans preference as provided in subchapter VII of this chapter;

(E) Appointments made without time limitation in accordance with subparagraph (D) of this paragraph, as permanent Educational Service status appointments upon satisfactory completion of a probationary period of at least 1 year;

(F) Temporary and other time-limited appointments in appropriate cases which do not confer permanent status, but are to be made, insofar as practicable, in accordance with subparagraph (D) of this paragraph;

(G) Appointments to continuing positions (in the absence of lists of eligibles), which do not confer permanent status, subject to meeting minimum qualification standards and subject to termination as soon as lists of qualified eligibles for permanent appointment can be established in accordance with subparagraph (D) of this paragraph;

(H) Emergency appointments for not more than 30 days to provide for maintenance of essential services in situations of natural disaster or catastrophes where normal employment procedures are impracticable;

(I) Promotion of permanent employees, giving due consideration to demonstrated ability, quality and length of service;

(J) Reinstatements, reassignments, and transfers of employees with permanent status;

(K) Establishment of programs, including trainee programs, designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities for members of disadvantaged groups, handicapped persons, women, and other appropriate target groups. These programs may provide for permanent appointments to trainee or similar positions through competitive procedures established by the Boards;

(L) Reduction-in-force procedures, with: (i) A prescribed order of separation based on tenure of appointment, length of service, including creditable federal and military service, District residency, veterans preference, and relative work performance; (ii) priority reemployment consideration for employees separated; (iii) consideration of job sharing and reduced hours; and (iv) employee appeal rights;

(L-i) Notwithstanding any other provision of law, the Board of Education shall not issue rules that require or permit nonschool-based personnel or

school administrators to be assigned or reassigned to the same competitive level as classroom teachers;

(L-ii) Notwithstanding any other provision of law, the Board of Education shall not issue rules that require or permit nonschool-based personnel or school administrators to be assigned or reassigned to the same competitive level as classroom teachers;

(M) Separation for cause, which shall be subject to the adverse action and appeal procedures provided for in subchapter XVII of this chapter; and

(N) Selections to the Educational Service shall be made in accordance with equal employment opportunity principles as set forth in subchapter VII of this chapter.

(3) Repealed.

(c)(1) For the purpose of this subsection, “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2) A public official who appoints, employs, promotes, or advances, or advocated such appointment, employment, promotion, or advancement of any individual in violation of this subsection shall reimburse the District for any funds improperly paid to such individual.

(3) The Boards may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this subsection.

(4) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency, and is a relative of the individual.

(d)(1) Notwithstanding any provision of § 1-2501 et seq., an applicant for District government employment in the Educational Service who is a bona fide resident of the District at the time of application shall be given a hiring preference over a non-resident applicant. This preference shall be in addition to, and not instead of, qualifications established for the position.

(2) An applicant claiming a hiring preference shall submit proof of bona fide residency in a manner determined by the Boards pursuant to paragraph (5) of this subsection. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 5 consecutive years from the effective date of hire. Failure to maintain bona fide District residency for the consecutive 5-year period shall result in forfeiture of employment.

(3) Any individual hired under a previous residency law who was subject to a residency requirement shall be treated as if the individual claimed a

preference and was hired pursuant to the Residency Preference Amendment Act of 1988.

(4) In reductions-in-force, a resident District employee shall be preferred for retention and reinstatement of employment over a non-resident District employee. For purposes of this paragraph only, a non-resident District employee hired prior to January 1, 1980, shall be considered a District resident. When the provisions of this paragraph conflict with an effective collective bargaining agreement, the terms of the collective bargaining agreement shall govern.

(5) A District employee hired in the Educational Service prior to March 16, 1989, who elects to apply for a competitive promotion in the Educational Service and to claim a preference, shall be bound by the provisions of paragraph (2) of this subsection.

(6) The Boards shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the preference system established by this subsection. The proposed rules shall be submitted to the Council no later than February 1, 1989, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(7)(A) Except as provided in subparagraph (B), the Boards may not require an individual to reside in the District of Columbia as a condition of employment in the Educational Services.

(B) The Boards shall provide notice to each employee in the Educational Service of the provisions of this subsection that require an employee claiming a residency preference to maintain District residency for 5 consecutive years, and shall only apply such provisions with respect to employees claiming a residency preference on or after March 16, 1989.

(e) Repealed. (1973 Ed., § 1-338.2; Mar. 3, 1979, D.C. Law 2-139, § 801A, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, 2(b), 25 DCR 25 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(h), 27 DCR 2632; May 22, 1981, D.C. Law 4-2, § 2(d), (e), 28 DCR 2586; Apr. 3, 1982, D.C. Law 4-92, § 2(d), (e), 29 DCR 745; Mar. 14, 1985, D.C. Law 5-159, § 21, 32 DCR 30; Aug. 1, 1985, D.C. Law 6-15, § 7(b), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(h), 33 DCR 7241; Mar. 16, 1989, D.C. Law 7-203, § 2(b), 36 DCR 450; Nov. 21, 1989, 103 Stat. 1277, Pub. L. 101-168, § 110B(b)(2); Sept. 26, 1995, D.C. Law 11-52, § 1001(b), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(a), (b), 43 DCR 5; Apr. 26, 1996, 110 Stat. [215], Pub. L. 104-134, § 145(2); Aug. 1, 1996, D.C. Law 11-152, § 302(g), 43 DCR 2978; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 138(2); June 10, 1998, D.C. Law 12-124, § 101(f), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(b), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153.)

Cross references. — As to Career, Excepted, and Educational Service employees, see § 1-625.2.

Section references. — This section is referred to in §§ 1-602.4 and 1-625.2.

Effect of amendments. — D.C. Law 12-124, in (b)(2)(L), inserted "District residency." D.C. Law 12-138 added (e).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-14. — See note to § 1-608.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 4-2. — See note to § 1-608.1.

Legislative history of Law 4-92. — See note to § 1-608.1.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — See note to § 1-608.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 7-203. — See note to § 1-608.1.

Legislative history of Law 11-52. — See note to § 1-603.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-138. — See note to § 1-608.1.

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277, 112 Stat. 2681-146, repealed D.C. Law 12-138, which had added a subsection (e) to this section.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

References in text. — The “Residency Preference Amendment Act of 1988”, referred to in subsection (d)(3), is D.C. Law 7-203.

Application for employment, promotions, and reductions in force. — Section 110B(a) of Pub. L. 101-168, the District of Columbia Appropriations Act, 1990, provided that:

“(1) **IN GENERAL.** — The rules issued pursuant to the amendments to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 made by the Residency Preference Amendment Act of 1988 (D.C. Law 7-203) shall include the provisions described in paragraph (2).

(2) **DESCRIPTION OF POLICIES.** —

(A) **POLICY REGARDING APPLICATION FOR EMPLOYMENT.** — The Mayor of the District of Columbia may not give an applicant for District of Columbia government employment in the Career Service who claims a District residency preference more than a 5 point hiring preference over an applicant not claiming such a preference, and, in the case of equally qualified applicants, shall give an applicant claiming such a preference priority in hiring over an applicant not claiming such a preference.

(B) **POLICY REGARDING PROMOTIONS AND REDUCTIONS IN FORCE FOR CAREER SERVICE EMPLOYEES.** — In calculating years of service for the purpose of implementing a reduction-in-force, the Mayor may not credit an employee in the Career Service who claims a District residency preference with more than 1 year of additional service credit, and in the case of equally qualified employees, shall give an employee claiming such a preference priority in promotion over an employee not claiming such a preference.

(C) **INDIVIDUALS SUBJECT TO PROVISIONS.** — The amendments to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 made by the Residency Preference Amendment Act of 1988 shall apply only with respect to individuals claiming a District residency preference or applying for employment with the District of Columbia on or after March 16, 1989.”

Denial of within-grade salary increases. — Section 1001 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197) provided that notwithstanding any other provision of law or regulation, no employee of the University of the District of Columbia shall receive a within-grade salary increase in the time period beginning on the effective date of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994 and ending 1 year after that effective date.

Section 1001 of D.C. Law 10-253 provided that notwithstanding any other provision of law or regulation, no employee of the University of the District of Columbia shall receive a within-grade salary increase in the time period beginning on the effective date of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994 and ending 1 year after that effective date.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Editor’s note. — Both D.C. Law 11-52 and D.C. Law 11-98 added a new (b)(2)(L-i). The versions were almost identical, and effect has been given to D.C. Law 11-98.

Burden of proof in tenure decisions. — Once the University of the District of Columbia made a prima facie showing that it followed proper procedures and considered the correct subjective criteria, the burden should have shifted to the applicant for tenure to show her entitlement to promotion. *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989).

Cited in *American Fed'n of Gov't Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983); *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992); *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997).

§ 1-609.2. Modifications of Board of Education Reduction-in-Force procedures.

(a) Notwithstanding any other provision of law, rule, or regulation, an employee of the District of Columbia Public Schools shall be:

- (1) Classified as an Educational Service employee;
- (2) Placed under the personnel authority of the Board of Education; and
- (3) Subject to all Board of Education rules.

(b) School-based personnel shall constitute a separate competitive area from nonschool-based personnel who shall not compete with school-based personnel for retention purposes. (Apr. 26, 1996, 110 Stat. 1321 [215], Pub. L. 104-134, § 146; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 139.)

Subchapter IX-A. [Reserved].

Emergency act amendments. — For temporary addition of subchapter IX-A (Reserved), see § 2(j) of the Legal Service Establishment

Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Subchapter IX-B. Legal Service.

§ 1-609.51. Definitions.

For the purposes of this subchapter, the term:

(1) “Agency” means any subordinate or independent agency of the District government, but does not include the following entities:

- (A) Superior Court or the Court of Appeals;
- (B) District of Columbia Financial Responsibility and Management Assistance Authority;
- (C) Board of Parole;
- (D) Health and Hospitals Public Benefit Corporation;
- (E) Housing Finance Agency;
- (F) Pretrial Services Agency;
- (G) Public Defender Service;
- (H) Water and Sewer Authority;
- (I) Washington Convention Center Authority;
- (J) Housing Authority; or
- (K) Any agency or unit thereof excluded by court order from coverage pursuant to the CMPA.

(2) “Attorney” means any position which is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or

in substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer.

(3) "Senior Executive Attorney Service position" means:

(A) Any attorney position which is classified above DS-15, or an equivalent position, and in which the employee:

(i) Directs the work of an organizational unit;

(ii) Is held accountable for the success of one or more specific programs or projects;

(iii) Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to these goals;

(iv) Supervises the work of employees other than personal assistants;

(v) Performs important legal policy-making or policy-determining functions; or

(vi) Provides significant leadership in legal counseling or in the trial of cases;

(B) Any attorney who is a Deputy Corporation Counsel, Principal Deputy Corporation Counsel, Special Deputy Corporation Counsel, Senior Counsel to the Corporation Counsel, or any other attorney in the Office of the Corporation Counsel who routinely reports directly to the Corporation Counsel; or

(C) Any attorney who is a General Counsel employed by a subordinate agency or independent agency. (Mar. 3, 1979, D.C. Law 2-139, § 851, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Emergency act amendments. — For temporary addition of subchapter IX-B, see § 2(j) of the Legal Service Establishment Emergency

Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 12-260. — See note to § 1-604.4.

§ 1-609.52. Creation of the Legal Service.

There is established within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies, and goals of the District and is of the highest quality. In order to improve the quality and timeliness of the legal services that support the lawful activities, objectives, and policies of the District government, this subchapter shall vest in the Corporation Counsel supervisory authority of attorneys employed by the subordinate agencies. (Mar. 3, 1979, D.C. Law 2-139, § 852, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

Legislative history of Law 12-260. — See note to § 1-604.4.

§ 1-609.53. Creation of the Senior Executive Attorney Service.

(a) A Senior Executive Attorney Service is established as part of the Legal Service. The Senior Executive Attorney Service shall be administered to assure that Senior Executive Attorneys are accountable and responsible for the effectiveness and productivity of employees under their supervision.

(b) An appointment to the Senior Executive Attorney Service shall be at-will employment.

(c) A Senior Executive Attorney who is to be removed or whose grade is to be reduced may be appointed, at the discretion of the Corporation Counsel, to a position in the Legal Service which is available and for which the attorney is qualified, if the removal or reduction in grade is not for delinquency or misconduct.

(d) A Senior Executive Attorney employed by the Office of the Corporation Counsel shall serve at the pleasure of the Corporation Counsel.

(e) A Senior Executive Attorney employed by any other subordinate agency shall serve at the pleasure of the Corporation Counsel, and the Corporation Counsel shall consult with the agency head before making any decision concerning the termination of a Senior Executive Attorney employed by the agency. The Senior Executive Attorney shall serve at the pleasure of the agency head where the Corporation Counsel has delegated direction and control over the attorney to the agency head pursuant to § 1-609.55.

(f) A Senior Executive Attorney employed by an independent agency shall serve at the pleasure of the agency head.

(g) Persons currently holding an appointment in the Excepted Service which meet the definition of a Senior Executive Attorney Service position as defined in § 1-609.51(3) shall be appointed to the Senior Executive Attorney Service unless the employee declines the appointment. A person who declines this appointment shall be appointed within 3 months to another position in the Legal Service if a vacant position for which the employee qualifies is available and is acceptable to the employee.

(h) An individual appointed to the Senior Executive Attorney Service shall be paid separation pay of up to 12 weeks of his or her basic pay upon separation for non-disciplinary reasons. (Mar. 3, 1979, D.C. Law 2-139, § 853, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.54. Appointment of attorneys.

(a) Attorneys employed by the Office of the Corporation Counsel, wherever located in the District government, shall be hired by the Corporation Counsel. Attorneys, including Senior Executive Attorneys, employed by any other

subordinate agency shall be hired by the head of the agency with the approval of the Corporation Counsel.

(b) Attorneys employed by an independent agency shall be hired by the head of the agency. (Mar. 3, 1979, D.C. Law 2-139, § 854, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.55. Supervision of attorneys.

(a) Attorneys employed by the Office of the Corporation Counsel, wherever located in the District government, and attorneys employed by any other subordinate agency, including Senior Executive Attorneys, shall act under the direction, supervision, and control of the Corporation Counsel. The Corporation Counsel shall exercise authority, to the maximum extent practicable, over other subordinate agency attorneys in a way that:

(1) Supports the lawful activities, objectives, and policies of the other subordinate agencies;

(2) Provides the attorney services requested by the other subordinate agencies; and

(3) Avoids giving unsolicited advice on policy decisions that involve no legal issues.

(b) Notwithstanding the authority vested in the Corporation Counsel by subsection (a) of this section, the Corporation Counsel may delegate the direction, supervision and control of attorneys to a subordinate agency head as follows:

(1) After consulting with the agency head, delegate in writing the direction, supervision, and control of all or some of the agency's attorneys, including Senior Executive Attorneys. This delegation may be withdrawn at any time, in writing, after consulting with the agency head.

(2) The delegation and its withdrawal, if any, pursuant to paragraph (1) of this subsection shall cite the reasons for the delegation or withdrawal of delegation using the following criteria:

(i) Agency size;

(ii) Agency workload;

(iii) Necessity or lack of necessity for agency in-house counsel to engage in high level policy-making;

(iv) Agency head or agency General Counsel or the equivalent, expressed preferences;

(v) Necessity or lack of necessity for Corporation Counsel supervision;

(vi) Practicality or impracticality of Corporation Counsel supervision;

(vii) Existence of a conflict of interest if the Corporation Counsel supervises agency Counsel; or

(viii) Any other relevant factor as identified by the Corporation Counsel.

(c) Attorneys employed by independent agencies shall act under the direction, supervision, and control of the respective agency heads.

(d) Subject to the availability of an unfilled appropriated position in the receiving agency or as otherwise authorized by law, the Corporation Counsel may:

(1) After consulting with the affected agency head, transfer an attorney employed by the Office of the Corporation Counsel to any other subordinate agency; or

(2) After consulting with the sending agency head, transfer an attorney employed by a subordinate agency to any other subordinate agency, including the Office of the Corporation Counsel, with the approval of the head of the receiving agency, unless the Corporation Counsel has delegated the direction, supervision, and control of the attorney to the head of the agency that employs the attorney. (Mar. 3, 1979, D.C. Law 2-139, § 855, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.56. Disciplinary action for attorneys other than Senior Executive Attorneys.

(a) A Legal Service attorney, other than a Senior Executive Attorney, shall be subject to disciplinary action, including removal, suspension, or reduction in grade, for unacceptable performance or for any reason that is not arbitrary or capricious.

(b) The disciplinary action provided for in subsection (a) of this section shall be taken by:

(1) The Corporation Counsel when the attorney is employed by the Office of the Corporation Counsel;

(2) The Corporation Counsel, after consulting with the agency head, when the attorney is employed by a subordinate agency and there has been no delegation of authority over the attorney pursuant to § 1-609.55; or

(3) The agency head when the attorney is employed by an independent agency or by a subordinate agency and the Corporation Counsel has delegated authority over the attorney to the subordinate agency head pursuant to § 1-609.55.

(c) Any disciplinary action pursuant to this section taken against attorneys in subordinate agencies may be appealed to the Mayor. The Mayor's decision regarding this disciplinary action shall be final. The decision of the agency head shall be final with respect to disciplinary action taken against attorneys in independent agencies. (Mar. 3, 1979, D.C. Law 2-139, § 856, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.57. Continuing legal education; management supervisory skills maintenance and enhancement; accountability standards and plans.

(a) The Corporation Counsel shall establish an annual mandatory program of continuing legal education for attorneys in the Legal Service, other than attorneys employed by independent agencies. Attorneys in the Legal Service who supervise one or more other attorneys as part of their normal duties shall maintain and enhance their management and supervisory skills through at least annual in-house or other training arranged or approved by their employing agency.

(b) The Corporation Counsel shall develop and establish a performance management system that includes accountability standards and individual accountability plans for all attorneys, including Senior Executive Attorneys, in the Legal Service who are under the direction and control of the Corporation Counsel. The performance management system shall link pay to performance.

(c) The head of an independent agency that employs attorneys in the Legal Service shall develop and establish a performance management system that includes accountability standards and individual accountability plans for all attorneys in the Legal Service who are under their direction and control. The head of an independent agency may utilize the system developed for use by the Corporation Counsel for attorneys under the direction and control of the Corporation Counsel, for attorneys under the independent agency head's direction and control. The performance management system shall link pay to performance. (Mar. 3, 1979, D.C. Law 2-139, § 857, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.58. Pay parity for attorneys.

(a) Compensation for Legal Service attorneys shall be reviewed annually by the Mayor and shall be fixed in accordance with the following policy:

(1) The compensation of Senior Executive Attorneys shall be competitive with that provided by the federal government Senior Executive Service Salary Table for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications and experience; and

(2) The compensation of all other Legal Service Attorneys shall be competitive with that provided by the federal government General Schedule

for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications, and experience.

(b) Pay shall be established by the Mayor and submitted by resolution to the Council pursuant to § 1-612.6. (Mar. 3, 1979, D.C. Law 2-139, § 858, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.59. Residency.

(a) The provisions of § 1-608.1(e) shall apply to employment in the Legal Service other than the Senior Executive Attorney Service.

(b) Notwithstanding the provisions of §§ 1-608.1(e) and 1-2501 et seq., any attorney appointed to the Senior Executive Attorney Service shall become a bona fide resident of the District within 180 days of the effective date of the appointment, and shall remain a District resident for the duration of the employment. Failure to become a District resident or to maintain District residency shall result in forfeiture of the position to which the person has been appointed.

(c) The Director of Personnel may waive the residency requirement in subsection (b) of this section for any individual appointed to a hard-to-fill position pursuant to § 1-609.53. (Mar. 3, 1979, D.C. Law 2-139, § 859, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Legislative history of Law 12-260. — See note to § 1-604.4.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

§ 1-609.60. Reporting.

No later than one year after April 20, 1999, the Corporation Counsel shall report, in writing, to the Mayor and the Council concerning all aspects of the operation of the Legal Service since its establishment. This report shall include a description of:

(a) The effect of any pay increase approved for attorneys in the Legal Service on the quality of applicants for positions in the Legal Service and the retention of highly qualified attorneys;

(b) The experience under the new standards for adverse and corrective actions;

(c) The programs established for legal and management training;

(d) The performance management system established, including the results obtained from linking the award of additional income allowances to performance; and

(e) Any other matters that the Corporation Counsel identifies as relevant. (Mar. 3, 1979, D.C. Law 2-139, § 860, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

Legislative history of Law 12-260. — See note to § 1-604.4.

§ 1-609.61. Rulemaking.

The Corporation Counsel may adopt rules to implement the provisions of this subchapter in accordance with subchapter I of Chapter 15 of this title. (Mar. 3, 1979, D.C. Law 2-139, § 861, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

Legislative history of Law 12-260. — See note to § 1-604.4.

§ 1-609.62. Applicability.

The provisions of this subchapter shall apply on April 20, 1999, except as follows:

(1) Section 1-609.52 shall include attorneys employed by the District of Columbia Board of Education as part of the new Legal Service only as long as there is no Congressional statutory requirement that attorneys employed by the District of Columbia public schools be classified as Educational Service employees.

(2) The provisions of this subchapter shall apply to attorneys employed by the Office of the Chief Financial Officer when the District of Columbia is no longer in a control period, as defined in § 47-393(4).

(3) Within 90 days after April 20, 1999, the Mayor shall appoint to the new Legal Service any attorney who has been appointed to a position in the Office of the Corporation Counsel as of the effective date of this subchapter. Effective October 1, 1999, the appropriate personnel authority shall appoint to the new Legal Service any attorney who has been appointed to a position in any other subordinate agency or in any independent agency as of that date.

(4) The provisions of this subchapter shall apply to individuals hired on or before December 31, 1979 as attorneys by the Mayor, an agency under the personnel authority of the Mayor, or any independent agency upon enactment of legislation by Congress that states the following:

“Notwithstanding any other law, the provisions contained in Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, passed on second reading on December 15, 1998 (Enrolled version of Bill 12-660) shall apply to all covered attorneys first hired on or before December 31, 1979.” (Mar. 3, 1979, D.C. Law 2-139, § 862, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Effect of amendments. — D.C. Law 12-260 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-609.51.

Legislative history of Law 12-260. — See note to § 1-604.4.

Subchapter X. Excepted Service.

§ 1-610.1. Creation of the Excepted Service; qualifications; appointment; exclusivity of service.

The qualifications for each Excepted Service position shall be developed and issued by the appropriate personnel authority in consultation with the Mayor. Each employee appointed in the Excepted Service (except those included in § 1-610.8) must meet the minimum standards prescribed for the position to which he or she is appointed. Each personnel authority may fill positions in the Excepted Service as provided in this subchapter. Excepted Service employees may be hired noncompetitively. Persons appointed to the Excepted Service are not in the Career, Educational, Management Supervisory or Legal Service. (1973 Ed., § 1-339.1; Mar. 3, 1979, D.C. Law 2-139, § 901, 25 DCR 5740; Apr. 20, 1999, D.C. Law 12-260, § 2(d), 46 DCR 1318.)

Cross references. — As to reduction-in-force of Career, Excepted, and Educational Service employees, see § 1-625.2.

As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-602.3, 1-610.2, 1-610.3, 1-619.3, 1-1451, 1-1462, 5-412.2, and 40-1705.

Effect of amendments. — D.C. Law 12-260 substituted "Management Supervisory or Legal" for "or Executive" in the last sentence.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the

Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-260. — See note to § 1-604.4.

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); Gross v. Winter, 692 F. Supp. 1420 (D.D.C. 1988), aff'd, 876 F.2d 165 (D.C. Cir. 1989).

§ 1-610.2. Nature of positions in the Excepted Service and conversion rights.

Each person holding an excepted appointment under the authority of this section and §§ 1-610.1 and 1-610.3 is intended to be an individual whose primary duties are of a policy determining, confidential, or policy advocacy character and who reports directly to the head of an agency. No person holding an Excepted Service appointment pursuant to §§ 1-610.3 or 1-610.8 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the 6 month period immediately preceding a Mayoral election. However, upon termination, a person with Career or Educational Service status may retreat, at the discretion of the terminating personnel authority, within 3 months to a vacant position in such service for which he or she is qualified. The provisions of this section shall not apply to employees of the Council of the District of Columbia. (1973 Ed., § 1-339.2; Mar. 3, 1979, D.C.

Law 2-139, § 902, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(i), 27 DCR 2632; June 10, 1998, D.C. Law 12-124, § 101(g), 45 DCR 2464.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-610.4, 1-619.3, 1-1451, 1-1462, and 40-1705.

Effect of amendments. — D.C. Law 12-124 rewrote the section.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

No secured property right. — Plaintiff's status as an "excepted service" employee pursuant to this section does not create a constitutionally secured "property" right. *Mulhall v. District of Columbia*, 747 F. Supp. 15 (D.D.C. 1990), *aff'd*, 946 F.2d 1565 (D.C. Cir. 1991).

Cited in *Gross v. Winter*, 692 F. Supp. 1420 (D.D.C. 1988), *aff'd*, 876 F.2d 165 (D.C. Cir. 1989); *Council of D.C. v. Clay*, App. D.C., 683 A.2d 1385 (1996), *cert. denied*, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-610.3. Number of Excepted Service employees; redelegation of authority to appoint; publication requirement.

(a) Under qualifications issued pursuant to § 1-610.1, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

(1) The Mayor may appoint persons to serve as his or her personal staff, to be paid from funds appropriated for the Office of the Mayor;

(2) The Mayor may appoint persons to 220 positions, of which 60 may be allotted to and designated by the Office of the Inspector General. In a control year, a maximum of 20 positions subject to appointment by the Mayor shall be allocated to and designated by the Office of the Chief Financial Officer. In addition to the 220 Excepted Service positions, the Chief of Police may designate up to 1% of the total number of authorized positions within the Metropolitan Police Department as Excepted Service policy positions, no more than 10 of which may be filled by sworn members or officers;

(3) All employees of the Council of the District of Columbia, except those permanent technical and clerical employees appointed by the Secretary or General Counsel;

(4) The District of Columbia Board of Education may appoint 25 persons;

(5) The Board of Trustees of the University of the District of Columbia may appoint officers of the University, persons who report directly to the President, persons who head major units of the University, academic administrators, and persons in a confidential relationship to the foregoing, exclusive of those listed in the definition of the Educational Service;

(6) The District of Columbia General Hospital Commission may appoint 10 persons;

(6a) The District of Columbia Lottery and Charitable Games Control Board ("Board") may appoint 6 persons who report directly to either the Executive Director or Deputy Director, or who head major units of the Board;

(7) Each other personnel authority not expressly designated above may appoint 2 persons; and

(8) Repealed.

(b) The authority to appoint persons to the Excepted Service, which is vested in subsection (a) of this section, may be redelegated, in whole or in part.

(c) Each personnel authority vested with authority in subsection (a) of this section shall publish in the District of Columbia Register within 15 days of March 3, 1979, a list of all positions to be filled by Excepted Service appointments under the authority of this section. Such notice shall also include a complete statement of position qualifications, standards and the proposed salary range for each position. Within 45 days of actual appointment, the names of all persons appointed to Excepted Service positions under the authority of this section shall be published in the District of Columbia Register. Thereafter, any changes in such appointments shall be published in the District of Columbia Register within 45 days after the actual change in appointment.

(d) At the discretion of the personnel authority, an individual appointed to the Excepted Service at grade level DS-11 or above pursuant to this section:

(1) May be paid in accordance with the pay schedule for the Management Supervisory Service as provided in § 1-610.56; and

(2) May be placed in any step of the appropriate grade of that schedule.

(e) The personnel authority may authorize performance incentives for exceptional service for individuals appointed pursuant to this section not to exceed 10% of the rate of basic pay in any year. Such exceptional service incentives may be paid only when the Excepted Service employee is bound by a performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is paid.

(f) An individual appointed to the Excepted Service pursuant to this section or § 1-610.8 shall be paid separation pay of up to 12 weeks of his or her basic pay upon separation for non-disciplinary reasons.

(g) Pursuant to regulations as the Mayor may prescribe, the following expenses may be paid to an individual being interviewed for, or an appointee to, a hard-to-fill Excepted Service position at a DS-11 or above:

(1) Reasonable pre-employment travel expenses;

(2) Reasonable relocation expenses for the Excepted Service selectee or appointee and his or her immediate family if they relocate to the District of Columbia from outside the Greater Washington Metropolitan Area; and

(3) A reasonable temporary housing allowance, for a period not to exceed 60 days, for the Excepted Service selectee or appointee and his or her immediate family. (1973 Ed., § 1-339.3; Mar. 3, 1979, D.C. Law 2-139, § 903, 25 DCR 5740; Aug. 2, 1983, D.C. Law 5-24, § 12(b), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(i), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(b), 34 DCR 670; Aug. 1, 1996, D.C. Law 11-152, § 302(h), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(h), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, § 302, 45 DCR 7193.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-604.6, 1-610.2, 1-619.3,

1-1451, 1-1462, and 40-1705.

Effect of amendments. — D.C. Law 12-124 added (d), (e), (f), and (g).

D.C. Law 12-175 rewrote (a)(2).

Temporary amendment of section. — Section 2 of D.C. Law 11-263 repealed (c) and rewrote (a)(2) to read as follows:

“(a) Under qualifications issued pursuant to § 1-610.1, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

“(2) The Mayor may appoint persons to up to a total of no more than 200 of the total number of positions under the Mayor’s personnel authority, 40 of which may be allotted to and designated by the Office of the Inspector General and, in a control year, up to 20 positions subject to appointment by the Mayor shall be allocated to and designated by the Office of the Chief Financial Officer.”

Section 5(b) of D.C. Law 11-263 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-148 amended (a)(2) to read as follows:

“(a) Under qualifications issued pursuant to § 1-610.1, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

“(2) The Mayor may appoint persons up to a total of no more than 220 of the total number of positions under the Mayor’s personnel authority, 60 of which may be allotted to and designated by the Office of the Inspector General. In a control year, up to 20 positions subject to appointment by the Mayor shall be allocated to and designated by the Office of the Chief Financial Officer.”

Section 4(b) of D.C. Law 12-148 provided that the act shall expire after 225 days of its having taken effect or on the effective date of the Designation of Excepted Service Positions Amendment Act of 1998, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Designation of Excepted Service Positions Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-50, March 31, 1997, 44 DCR 2199), and see § 2 of the Designation of Excepted Service Positions Emergency Amendment Act of 1998 (D.C. Act 12-348, May 6, 1998, 45 DCR 2999).

Section 4 of D.C. Act 12-348 provides for the application of the act.

For temporary amendment of section, see § 2(a) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Author-

ization Emergency Amendment Act of 1998 (D.C. Act 12-381, June 22, 1998, 45 DCR 4474).

For temporary amendment of section, see § 102 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 102 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

For the temporary repeal of the Excepted Services Designation Temporary Amendment Act of 1996 (D.C. Law 11-156, September 20, 1996), see § 3 of the Designation of Excepted Service Positions Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-50, March 31, 1997, 44 DCR 2199).

Section 5 of D.C. Act 12-50 provides for the application of the act.

For the temporary repeal of § 2(a) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Authorization Emergency Amendment Act of 1998 (Enrolled Bill 12-653), see § 103 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 103 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 5-24. — See note to § 1-604.6.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 6-205. — See note to § 1-604.6.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 11-156. — Law 11-156, the “Excepted Service Positions Designation Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-685. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 17, 1996, it was assigned Act No. 11-284 and transmitted to both Houses of Congress for its review. D.C. Law 11-156 became effective on September 20, 1996.

Legislative history of Law 11-263. — Law 11-263, the “Designation of Excepted Services Positions Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-993. The Bill was adopted on first and second readings on December 3, 1996, and January 7, 1997, respectively. Signed by the Mayor on January 23, 1997, it was assigned Act

No. 11-530 and transmitted to both Houses of Congress for its review. D.C. Law 11-263 became effective on April 25, 1997.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-148. — Law 12-148, the “Designation of Excepted Service Positions Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-608. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 20, 1998, it was assigned Act No. 12-360 and transmitted to both Houses of Congress for its review. D.C. Law 12-148 became effective on September 18, 1998.

Legislative history of Law 12-175. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions

of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Temporary repeal of Law 11-156. — Section 3 of D.C. Law 11-263 repealed D.C. Law 11-156.

Applicability of § 101(h) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Cited in Council of D.C. v. Clay, App. D.C., 683 A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-610.4. Special appointments.

Special noncompetitive appointments may be made to positions provided under the authority of this section. Such positions are covered by the provisions of § 1-610.2 relating to the Excepted Service positions. The nature of the appointment must be made known to the employee prior to effecting the appointment.

(1) Individuals appointed to positions created under public employment programs established by law.

(2) Positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including developmentally disabled or handicapped persons, ex-offender or other disadvantaged groups.

(3) Positions filled by the appointment of a federal employee under the mobility provisions of the Intergovernmental Personnel Act of 1970 (84 Stat. 1901, Pub. L. 91-648).

(4) Positions established under federal grant funded programs having a limited or indefinite duration, provided state merit requirements are not applicable; provided, however, that this paragraph shall not apply to any employees of the Board of Education or of the Trustees of the University of the District of Columbia.

(5) Positions established to employ professional, scientific, or technical experts or consultants.

(6) Positions established under cooperative educational and study programs. (1973 Ed., § 1-339.4; Mar. 3, 1979, D.C. Law 2-139, § 904, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(j), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(i), 43 DCR 2978.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-602.4, 1-607.2, 1-610.2,

1-610.5, 1-617.1, 1-637.1, and 40-1705.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — Sec

tion 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990,

provided that § 4(b) of D.C. Law 6-177 is repealed.

Delegation of authority for Summer Youth Employment Program participants. — See Mayor's Order 83-131, May 24, 1983; Mayor's Order 84-86, April 6, 1984.

Cited in *Grant v. District of Columbia*, App. D.C., 545 A.2d 1262 (1988); *Mulhall v. District of Columbia*, 747 F. Supp. 15 (D.D.C. 1990), *aff'd*, 946 F.2d 1565 (D.C. Cir. 1991).

§ 1-610.5. Lack of job protection; procedural protection.

Employees in the Excepted Service (other than those appointed under the authority of § 1-610.4) do not have any job tenure or protection. After 1 year of average or above average performance as determined under subchapter XV of this chapter, persons appointed under the authority of this subchapter shall be entitled to a notice of at least 15 days when termination of service prior to the expiration date of appointment is contemplated, explaining the reason therefor. The employee does not have any right to appeal the termination. All other provisions of this chapter apply to Excepted Service employees: Except, that persons employed by the Council of the District of Columbia by personnel authorities identified in § 1-604.6(b)(3)(B) may have their employment relationship terminated by the member or chairperson of a committee of the Council of the District of Columbia employing them without further review by way of grievance or adverse action administrative appeals. (1973 Ed., § 1-339.5; Mar. 3, 1979, D.C. Law 2-139, § 905, 25 DCR 5740; June 11, 1981, D.C. Law 4-7, § 4, 28 DCR 1672.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 40-1705.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 4-7. — See note to § 1-612.16.

No secured property right. — Plaintiff's

status as an "excepted service" employee pursuant to this section does not create a constitutionally secured "property" right. *Mulhall v. District of Columbia*, 747 F. Supp. 15 (D.D.C. 1990), *aff'd*, 946 F.2d 1565 (D.C. Cir. 1991).

Cited in *French v. Devine*, 547 F. Supp. 443 (D.D.C. 1982); *Hall v. Ford*, 856 F.2d 255, 301 (D.C. Cir. 1988).

§ 1-610.6. Residency.

(a) Except as provided in subsection (c) or subsection (d) and notwithstanding any provision of § 1-2501 et seq., any person who applies for a position in the Excepted Service and who accepts appointment or is hired to fill a position in the Excepted Service shall become a bona fide resident of the District within 180 days of the effective date of the appointment, and shall maintain this residence for the duration of the employment. Failure to become a District resident or to maintain District residency, shall result in forfeiture of the position to which the person has been appointed.

(b) A person hired in the Excepted Service prior to March 16, 1989, who was required to be or become a District resident within 180 days of appointment and maintain that residency or forfeit employment, shall continue to be bound by the residency requirement after March 16, 1989.

(c) Subsections (a) and (b) shall not apply to any person applying for or accepting any position in the Excepted Service as an attorney, and such person shall be covered by the provisions of § 1-608.1(e).

(d) At the request of the Inspector General (as described in § 1-1182.8(a), the Director of Personnel may waive the application of subsections (a) and (b) to employees of the Office of the Inspector General.

(e) The Director of Personnel may waive the residency requirement in subsection (a) of this section for any individual appointed to a hard-to-fill position under § 1-610.3(a)(1) or (2). (1973 Ed., § 1-339.6; Mar. 3, 1979, D.C. Law 2-139, § 906, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(c), 36 DCR 450; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 136(a); Mar. 27, 1997, 111 Stat. 14, Pub. L. 105-7, § 2; June 10, 1998, D.C. Law 12-124, § 101(i), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(d), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153.)

Section references. — This section is referred to in §§ 1-611.1, 1-625.2, and 40-1705.

Effect of amendments. — Section 2 of Pub. L. 105-7, 111 Stat. 14, in (a), inserted “or subsection (d)” following “subsection (c)”; and added (d).

D.C. Law 12-124 added the subsection designated herein as (e).

D.C. Law 12-138 repealed (c).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-203. — See note to § 1-608.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-138. — See note to § 1-608.1.

Effective date. — Section 136(b) of Public Law 101-518, the District of Columbia Appropriations Act, 1991, provided that the amendments made by § 136(a) shall take effect as if included in the enactment of the Residency Preference Amendment Act of 1988 (D.C. Law 7-203, March 16, 1989).

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277 repealed D.C. Law 12-138.

District of Columbia Inspector General Improvement Act of 1997. — Section 1 of Pub. L. 105-7, 111 Stat. 14, provided that the act may be cited as the “District of Columbia Inspector General Improvement Act of 1997.”

§ 1-610.7. Transitional provisions.

Persons holding nontemporary appointments in the District of Columbia government, paid from appropriations made to the Office of the Mayor, may, on January 2, 1979, be reassigned to other offices or agencies of the District government. Persons holding appointments in the District of Columbia government, paid from appropriations made to the Council of the District of Columbia and classified as a GS-10 or less under § 5332 of Title 5 of the United States Code and whose position would not be in the Excepted Service under the provisions of this subchapter on January 1, 1980, shall be appointed to the Career Service created in subchapter VIII of this chapter, if such incumbent is found to possess the minimal qualifications for the position to which he or she is appointed. (1973 Ed., § 1-339.7; Mar. 3, 1979, D.C. Law 2-139, § 907, 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1 and 40-1705.

Legislative history of Law 2-139. — See note to § 1-601.1.

Position not in Career Service. — Director of Legislative Services Division of the Coun-

cil, a DS-13 position, was not a member of the Career Service who could be discharged only for cause. Council of D.C. v. Clay, App. D.C., 683

A.2d 1385 (1996), cert. denied, 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542 (1997).

§ 1-610.8. Statutory officeholders.

The following employees of the District shall be deemed to be in the Excepted Service. Their terms of office shall be at the pleasure of the appointing authority, or as provided by statute for a term of years, subject to removal for cause as may be provided in their appointing statute:

- (1) City Administrator;
- (2) Repealed;
- (3) The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;
- (4) People's Counsel of the District of Columbia;
- (5) Auditor of the District of Columbia;
- (6) The Chairman and members of the Public Service Commission;
- (7) The Chairman and members of the Board of Parole;
- (8) Executive Director of the Public Employee Relations Board;
- (9) Secretary to the Council;
- (10) General Counsel to the Council;
- (11) Repealed;
- (12) Executive Director of the Office of Employee Appeals;
- (13) The Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board;
- (14) Budget Director to the Council. (1973 Ed., § 1-339.8; Mar. 3, 1979, D.C. Law 2-139, § 908, 25 DCR 5740; Aug. 2, 1983, D.C. Law 5-24, § 12(c), 30 DCR 3341; Feb. 28, 1987, D.C. Law 6-205, § 2(c), 34 DCR 670; May 15, 1990, D.C. Law 8-127, § 2(f), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(j), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(e), 46 DCR 1318.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-610.1, 1-619.3, 1-1451, 1-1462, 2-2503, and 40-1705.

Effect of amendments. — D.C. Law 12-124 added (14).

D.C. Law 12-260 repealed (2); and deleted “and General Counsel” following “Director” in (12).

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 5-24. — See note to § 1-604.6.

Legislative history of Law 6-205. — See note to § 1-604.6.

Legislative history of Law 8-127. — See note to § 1-606.6.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-260. — See note to § 1-604.4.

Cited in French v. Devine, 547 F. Supp. 443 (D.D.C. 1982).

§ 1-610.9. Appointment of attorneys.

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 909, as added Aug. 7, 1980, D.C. Law 3-81, § 2(j), 27 DCR 2632; Apr. 20, 1999, D.C. Law 12-260, § 2 (f), 46 DCR 1318.)

Emergency act amendments. — For temporary repeal of section, see § 2(f) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 12-260. — See note to § 1-604.4.

Subchapter X-A. Management Supervisory Service.

§ 1-610.51. Establishment.

There is established within the District government the Management Supervisory Service to ensure that each agency has the highest quality managers and supervisors who are responsive to the needs of the government. Persons appointed to the Management Supervisory Service are not in the Career, Educational, Excepted, Executive, or Legal Service. (Mar. 3, 1979, D.C. Law 2-139, § 951, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(g), 45 DCR 1318.)

Effect of amendments. — D.C. Law 12-124 added this section.

D.C. Law 12-260 substituted “Executive, or Legal Service” for “or Executive Service”.

Emergency act amendments. — For temporary amendment of section, see § 2(g) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-260. — See note to § 1-604.4.

Applicability of § 101(k) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following:

“Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June

10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

§ 1-610.52. Composition.

Each individual (except for employees appointed pursuant to §§ 1-610.1 to 1-610.8 or subchapters IX, IX-B, or XI of this chapter, employees of the Board of Education, employees of the Board of Trustees of the University of the District of Columbia, and uniformed members of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department) who meets the definition of “management employee” pursuant to § 1-615.11(5) shall be in the Management Supervisory Service. (Mar. 3, 1979, D.C. Law 2-139, § 952, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(h), 45 DCR 1318.)

Effect of amendments. — D.C. Law 12-124 added this section.

D.C. Law 12-260 inserted “IX-B” and “of this chapter.”

Emergency act amendments. — For temporary amendment of section, see § 2(h) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-260. — See note to § 1-604.4.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

§ 1-610.53. Competitive appointments.

Appointments by the personnel authority shall be made on the basis of merit from among the highest qualified applicants, based on specific job requirements. Examining procedures shall be designed to achieve the maximum objectivity, reliability, and validity. (Mar. 3, 1979, D.C. Law 2-139, § 953, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

§ 1-610.54. Employment-at-will.

(a) An appointment to a position in the Management Supervisory Service shall be an at-will appointment. Management Supervisory Service employees shall be given a 15-day notice prior to termination. Upon termination, a person with Career or Educational Service status, or with Excepted Service status due to appointment as an attorney pursuant to § 1-610.9, may retreat, at the discretion of the personnel authority, within 3 months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted for which he or she is qualified.

(b) Employees appointed to the Management Supervisory Service shall be given severance pay in accordance with subchapter XII of this chapter upon separation for non-disciplinary reasons. (Mar. 3, 1979, D.C. Law 2-139, § 954, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

§ 1-610.55. Management Supervisory Service skills maintenance and enhancement.

Management Supervisory Service employees shall be required to maintain and enhance their management and supervisory skills. (Mar. 3, 1979, D.C. Law 2-139, § 955, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51

§ 1-610.56. Pay for Management Supervisory Service.

A pay schedule shall be developed by the Mayor following a classification and compensation study for the Management Supervisory Service. (Mar. 3, 1979, D.C. Law 2-139, § 956, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-610.57. Residency preference.

The provisions of § 1-608.1(e)(1), (2), (3), (5), (6), and (7) shall apply to employment in the Management Supervisory Service. (Mar. 3, 1979, D.C. Law 2-139, § 957, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-610.58. Transition provisions.

Persons currently holding appointments to positions in the Career Service who meet the definition of “management employee” as defined in § 1-615.11(5) shall be appointed to the Management Supervisory Service unless the employee declines the appointment. Persons declining appointment shall have priority for appointment to the Career Service if a vacant position for which they qualify is available within the agency and is acceptable to the employee. If no such vacant position is available, a 30-day separation notice shall be issued to the employee. (Mar. 3, 1979, D.C. Law 2-139, § 958, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Applicability of § 101(k) of D.C. Law 12-124. — See note to § 1-610.51.

Legislative history of Law 12-124. — See note to § 1-603.1.

Subchapter XI. Executive Service.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-611.1. Creation of Executive Service.

Repealed.

(1973 Ed., § 1-340.1; Mar. 3, 1979, D.C. Law 2-139, § 1001, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(d), 36 DCR 450; Apr. 12, 1997, D.C. Law 11-259, § 304(b), 44 DCR 1423; June 10, 1998, D.C. Law 12-124, § 101(l), 45 DCR 2464.)

Cross references. — As to present provisions concerning the Executive Service, see § 1-611.51 et seq.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(l) of D.C. Law 12-

124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-611.2. Incumbents.

Repealed.

(1973 Ed., § 1-340.2; Mar. 3, 1979, D.C. Law 2-139, § 1002, 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 304, 44 DCR 1423.)

Cross references. — As to present provisions concerning incumbents in the Executive Service, see § 1-611.54.

Legislative history of Law 11-259. — See note to § 1-611.1.

Subchapter XI-A. Executive Service.

§ 1-611.51. Policy.

(a) An Executive Service is established to ensure that the executive management of the District of Columbia government is responsive to the needs of the citizens and the goals of the government. Persons serving in the Executive Service shall assist the Mayor in advancing program responsibilities of the District government.

(b) The Mayor shall nominate persons to serve as subordinate agency heads in the Executive Service pursuant to § 1-633.7. Individuals appointed to the Executive Service, other than the Chief Procurement Officer, shall serve at the pleasure of the Mayor.

(c) The compensation and benefits system for the Executive Service is designed to attract and retain the highest caliber public administrators, who shall be accountable for the effective and efficient management of subordinate agencies. (Mar. 3, 1979, D.C. Law 2-139, § 1051, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

§ 1-611.52. Executive Service pay schedule.

(a) The Executive Schedule ("DX Schedule"), shall be divided into 5 pay levels and shall be the basic pay schedule for subordinate agency head positions.

(b) The Mayor shall designate the appropriate level for each subordinate agency head position.

(c) Each level shall have a minimum and maximum salary range established by the Mayor, subject to Council review and approval by resolution. Initial salary ranges shall be submitted by the Mayor to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 60-day period, the proposed salary ranges shall be deemed approved.

(d) Any subsequent changes to the salary ranges established pursuant to subsection (c) of this section shall be submitted by the Mayor to the Council for a 15-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 15-day period, the proposed salary ranges shall be deemed approved.

(e) Initial salary ranges and any subsequent changes to the salary ranges shall become effective upon approval and shall be published in the District of Columbia Register for notice purposes within 45 days of their approval. (Mar. 3, 1979, D.C. Law 2-139, § 1052, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.53. Executive Service pay plan.

(a) A person appointed to a position in the Executive Service shall be appointed at the level on the DX Schedule designated for the subordinate agency to which he or she is appointed, and shall receive a salary set at any amount within the salary range for that level that the Mayor determines to be appropriate.

(b) The salary of any person holding an appointment to a position in the Executive Service may, at any time, be increased or decreased by the Mayor, at his or her sole discretion, to any other salary within the salary range for the level occupied.

(c) The salary of an employee in the Executive Service who is temporarily assigned to a position at a higher or lower level on the DX Schedule shall be set, at the discretion of the Mayor, at any rate within the salary range of the level to which the employee is temporarily assigned or the salary range of the level of the position from which officially appointed.

(d) A person paid from the DX Schedule shall not be entitled to premium pay. (Mar. 3, 1979, D.C. Law 2-139, § 1053, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.54. Incumbents.

A person holding an appointment to a position in the Executive Service on October 21, 1998 shall continue to be paid at his or her existing rate of pay until the Mayor effects a personnel action establishing a new salary within the designated range for the level of the position to which the person is appointed. (Mar. 3, 1979, D.C. Law 2-139, § 1054, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.55. Reasonable pre-employment travel and relocation expenses and temporary housing allowance.

Pursuant to regulations the Mayor may prescribe, the following expenses may be paid in connection with Executive Service employment:

(1) Reasonable pre-employment travel expenses for an individual being interviewed for a subordinate agency head position;

(2) Reasonable relocation expenses for an Executive Service selectee or appointee and his or her immediate family if they are relocating to the District of Columbia from outside the Greater Washington Metropolitan Area; and

(3) A reasonable temporary housing allowance, for a period not to exceed 60 days, for an Executive Service selectee or appointee and his or her immediate family. (Mar. 3, 1979, D.C. Law 2-139, § 1055, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.56. Additional income allowance.

An additional income allowance of up to 15% of the maximum rate of pay for the level held may be paid, at the discretion of the Mayor, to a subordinate agency head who is required to hold a medical degree and who enters into a service agreement. (Mar. 3, 1979, D.C. Law 2-139, § 1056, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.57. Performance incentives.

The Mayor may authorize performance incentives for exceptional service for subordinate agency heads not to exceed 10% of the rate of basic pay in any year. Exceptional service incentives may be paid only when the agency head is bound by a performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is paid. (Mar. 3, 1979, D.C. Law 2-139, § 1057, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.58. Separation pay.

A subordinate agency head may be paid separation pay of up to 12 weeks of his or her basic pay upon separation from the government at the discretion of the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 1058, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.59. District residency.

(a) Any person who accepts appointment or is hired to fill a position in the Executive Service shall become a bona fide resident of the District within 180 days of the effective date of appointment and shall maintain District residency for the duration of the appointment. Failure to become a District resident or to maintain District residency shall result in forfeiture of the position to which the person has been appointed.

(b) The provisions of subsection (a) of this section may be waived for an individual appointed as Chief Technology Officer. (Mar. 3, 1979, D.C. Law 2-139, § 1059, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Apr. 13, 1999, D.C. Law 12-220, § 2, 46 DCR 481.)

Effect of amendments. — D.C. Law 12-124 added this section.

D.C. Law 12-220 added (b).

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-220. — Law 12-220, the “Executive Service Residency Requirement Amendment Act of 1998,” was intro-

duced in Council and assigned Bill No. 12-811, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-535 and transmitted to both Houses of Congress for its review. D.C.

Law 12-220 became effective on April 13, 1999.

Applicability of § 101(m) of D.C. Law

12-124. — See note to § 1-611.51.

§ 1-611.60. Subsequent appointments.

No person holding a position in the Executive Service may be appointed to a position in the Career, Educational, or Management Supervisory Service for at least one year immediately following his or her separation from the Executive Service, except that, upon termination, a person with Career, Educational, or Management Supervisory Service status may retreat, at the discretion of the Mayor, within 3 months to a vacant position in the service for which he or she is qualified. (Mar. 3, 1979, D.C. Law 2-139, § 1060, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-611.61. Universal leave.

The Executive Service employees' leave system shall provide the following:

- (1) No employee shall earn annual or sick leave.
- (2) Each employee shall have a universal leave account.
- (3) Each employee's universal leave account shall be credited with 26 days on the first pay period of the leave year, or on a pro-rata basis for appointments after the first pay period of the leave year.
- (4) No employee shall be charged for leave for any absence which is less than 8 hours.
- (5) An employee may carry over, for use in succeeding years, not more than 5 days of unused universal leave.
- (6) Each employee in the Executive Service on the last day of the last pay period of the leave year shall have his or her accrued annual leave balance, up to a maximum of 240 hours, transferred to an escrow account for use at the discretion of the employee until exhausted. The employee will be given a lump-sum payment for any annual leave in excess of 240 hours, payable at the rate of pay in effect immediately before the transition.
- (7) Each employee appointed without a break in service to a position in the Executive Service from another position in the District government, on or after the first day of the first pay period after enactment of this section shall have his or her accrued annual leave balance, up to a maximum of 240 hours, transferred to an escrow account for use at the discretion of the employee until exhausted. The employee will be given a lump-sum payment for any annual leave in excess of 240 hours, payable at the rate of pay in effect immediately before his or her appointment in the Executive Service.
- (8) Upon separation from his or her position in the Executive Service, any annual leave remaining in the escrow account and any universal leave to his or her credit (less a pro-rated amount representing the portion of the leave that would be creditable for the remainder of the year) will be paid at the employee's rate of pay at the time of separation.

(9) Sick leave previously accrued under a different leave system shall be held in an escrow account and may be used at the discretion of the employee until exhausted.

(10) The Mayor may establish a disability income protection program for Executive Service employees to include short and long-term disability insurance which shall provide coverage for non-job related illness or injury. (Mar. 3, 1979, D.C. Law 2-139, § 1061, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, § 2301, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(b), 46 DCR 2118; Apr. 27, 1999, D.C. Law 12-267, § 5, 46 DCR 960.)

Effect of amendments. — D.C. Law 12-124 added this section.

D.C. Law 12-175, in (6), substituted “on the last day of the last pay period of the leave year” for “at the time this section becomes effective”; in (7), inserted “on or after the first day of the first pay period after enactment of this section”; and added (10).

D.C. Law 12-264 substituted “shall have his or her accrued annual leave balance” for “shall have his or her annual leave balance” in the first sentence of (7).

D.C. Law 12-267 substituted “The Mayor may” for “The Mayor shall” in (10).

Temporary amendment of section. — Section 7 of D.C. Law 12-211 substituted “The Mayor may” for “The Mayor shall” in the first sentence of (10).

Section 9(b) of D.C. Law 12-211 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see §§ 6 and 7 of the Fiscal year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1998, 45 DCR 8016), and §§ 6 and 7 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-4, February 8, 1999, 46 DCR 2291).

Section 9 of D.C. Act 13-4 provides for the application of the act.

For temporary amendment of section, see § 1901 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, 45 DCR 7229), as amended by § 6 of D.C. Law 12-211, and § 1901 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 1902 of D.C. Act 12-401 provides that § 1901(a) and (b) shall apply upon the enact-

ment by the United States Congress of legislation adopting § 101(m) of the Omnibus Personnel Reform Amendment Act of 1998, signed by the Mayor on April 1, 1998 (D.C. Law 12-124; 45 DCR 2464).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Legislative history of Law 12-211. — Law 12-211, the “Fiscal Year 1999 Budget Support Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-773. The Bill was adopted on first and second readings on September 22, 1998, and October 6, 1998, respectively. Signed by the Mayor on November 5, 1998, it was assigned Act No. 12-512 and transmitted to both Houses of Congress for its review. D.C. Law 12-211 became effective on April 13, 1999.

Legislative history of Law 12-264. — See note to § 1-603.1.

Legislative history of Law 12-267. — Law 12-267, the “Closing of a Public Alley in Square 371, S.O. 96-202, Act of 1998,” was introduced in Council and assigned Bill No. 12-800. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-576 and transmitted to both Houses of Congress for its review. D.C. Law 12-267 became effective on April 27, 1999.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

Applicability of § 2301(a) and (b) of D.C. Law 12-175. — Section 2302 of D.C. Law 12-175, as amended by § 63 of D.C. Law 12-264, provided that § 2301(a) and (b) of the act shall apply as of October 21, 1998.

§ 1-611.62. Retirement benefits.

Executive Service employees shall be covered under subchapter XXVII of this chapter, except that employees first hired after September 30, 1987, may

elect to participate in the District's defined contribution plan or may elect to have the funds that would otherwise be contributed by the District under the defined contribution plan directed to another 401(a) retirement plan. (Mar. 3, 1979, D.C. Law 2-139, § 1062, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

§ 1-611.63. Life insurance benefits.

Executive Service employees shall be covered by the provisions of subchapter XXIII of this chapter, except that any Executive Service employee, whether covered by federal life insurance benefits (pursuant to § 1-623.1) or District life insurance benefits (pursuant to § 1-623.3), may receive additional coverage for himself or herself, not to exceed twice the rate of that employee's basic pay. The cost of that coverage shall be borne solely by the District government. (Mar. 3, 1979, D.C. Law 2-139, § 1063, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(m) of D.C. Law 12-124. — See note to § 1-611.51.

Subchapter XII. Classification; Compensation.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-612.1. Classification policy; grade levels; publication required; public hearing.

(a) The classification of all positions in the Career, Educational and the Excepted Services will be accomplished in accordance with the following policy:

(1) Individual positions will be grouped and identified by classes and grades, in accordance with their duties, responsibilities, and qualification requirements and shall be indexed and cross referenced in the incumbent classification and compensation system; and

(2) The principle of equal pay for substantially equal work will be supported.

(b) The grade levels of all positions in the Career, Educational, and Excepted Services shall be based on the consideration of applicable factors, such as knowledge and skills required by the positions; supervisory controls exercised over the work; guidelines used; complexity of the work; scope and effect of the work; personal contacts; purpose of contacts; physical demands of the positions; and work environment.

(c) Classification systems or proposals developed under the authority of this subchapter shall be published in the District of Columbia Register at least 60

days prior to their proposed effective date. The Mayor or the Board of Education or the Board of Trustees of the University of the District of Columbia shall hold, as provided in this subchapter, a public hearing on all such proposals he, she, or it has published in the District of Columbia Register prior to his, her, or its adoption of a classification system or amendment to such system; provided, that the classification system or systems in effect on December 31, 1979, shall remain in effect until the adoption of a classification system or systems pursuant to § 1-612.2 or § 1-612.11. (1973 Ed., § 1-341.1; Mar. 3, 1979, D.C. Law 2-139, § 1101, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(a), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(k), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(j), 43 DCR 2978.)

Cross references. — As to compensation of Rental Housing Commission members, see § 45-2511.

As to compensation of Rent Administrator, see § 45-2513.

Section references. — This section is referred to in §§ 1-612.2 and 1-612.11.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Compensation for District employees. — Section 120 of Pub. L. 104-194, 110 Stat. 2366, the District of Columbia Appropriations Act, 1997, provided that notwithstanding any other provisions of law, the provisions of § 1-601.1 et seq., enacted pursuant to § 1-242(3), shall apply with respect to the compensation of District of Columbia employees and provided that, for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5 of the United States Code.

Cited in *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997).

§ 1-612.2. Establishment and maintenance of classification system for Career and Excepted Services employees.

(a) In order to carry out the policies of § 1-612.1, the Mayor shall provide for the development of a classification system covering all positions in the Career and the Excepted Services.

(b) The Mayor shall provide that all positions covered by this classification system are properly described in writing in accordance with the principal duties and responsibilities officially assigned to those positions and shall provide that all positions are properly evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. The Mayor shall provide for meaningful consultation with the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia in the classification of positions of persons in the Career Service employed by the educational Boards.

(c) Repealed.

(d) Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least 60 days

prior to their proposed effective date. The Mayor shall hold a public hearing on all such proposals he or she publishes in the District of Columbia Register prior to his or her adoption of a classification system(s) or amendment to such system(s). (1973 Ed., § 1-341.2; Mar. 3, 1979, D.C. Law 2-139, § 1102, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(l), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(k), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(n)(1), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-606.3 and 1-612.1.

Effect of amendments. — D.C. Law 12-124 repealed (c).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions

of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(n) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-612.3. Compensation policy; compensatory time off; overtime pay.

(a) Compensation for all employees in the Career, Educational, and the Excepted Services shall be fixed in accordance with the following policy:

(1) Compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups. For the purpose of this paragraph, compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA): Provided, that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels;

(2) Pay for the various occupations and groups of employees shall be, to the maximum extent practicable, interrelated and equal for substantially equal work in accordance with this principle, dental officers shall be paid on the same schedule as medical officers having comparable qualifications and experiences;

(3) Differences in pay shall be maintained in keeping with differences in level of work and quality of performance; and

(4) Repealed.

(5) Repealed.

(6) Any full-time permanent, term, or TAPER District government employee who serves in a reserve component of the United States Armed Forces who was or will be called to active duty as a result of Operation Desert Shield

and Desert Storm shall receive, upon application and approval, an amount that equals the difference in compensation between the employee's District government basic pay reduced by the employee's basic military pay. This amount shall not be considered as basic pay for any purpose and shall be paid for any period during which the employee is carried in a non-pay status from the time the employee is called into active duty, following the formal inception of Operation Desert Shield and Desert Storm, until the employee is released from active duty or until September 31, 1992, whichever occurs sooner.

(b) The pay of an individual receiving an annuity under any District government civilian retirement system selected for employment in the District government on or after January 1, 1980, shall be reduced by the amount of annuity allocable to the period of employment as a reemployed annuitant. No reduction shall be made to the pay of a reemployed individual for any retirement benefits received by the reemployed individual pursuant to §§ 1-627.3 through 1-627.12, § 4-629(e), the Judges' Retirement Fund, established by § 1-714, or the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994.

(c) Repealed.

(d) Notwithstanding any other provisions of law or regulation, effective April 15, 1986, any employee who is covered by the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) ("FLSA"), and is eligible to earn compensatory time may receive compensatory time off at a rate not less than 1 and one-half hours for each hour of employment for which overtime compensation is required under the FLSA, in lieu of paid overtime compensation.

(1) If the work of an employee for which compensatory time off may be provided includes work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If the work of an employee does not include work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986.

(2) Any employee who, after April 15, 1986, has accrued the maximum number of hours of compensatory time off allowed under paragraph (1) of this subsection shall, for additional hours of work, be paid overtime compensation.

(e) Notwithstanding any other provision of District law or regulation, effective on the first day of the first pay period beginning one month after November 25, 1993, entitlement to and computation of overtime for all employees of the District government, except those covered by a collective bargaining agreement providing otherwise, shall be determined in accordance with, and shall not exceed, the overtime provisions of section 7 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207. No person shall be entitled to overtime under this section unless that person is either entitled to overtime under the Fair Labor Standards Act or is entitled to overtime under the personnel rules of the District of Columbia as they existed at the time of enactment of this section. (1973 Ed., § 1-341.3; Mar. 3, 1979, D.C. Law 2-139, § 1103, 25 DCR 5740; Sept. 16, 1980, D.C. Law 3-101, § 2, 27 DCR 3628; Mar.

4; 1981, D.C. Law 3-130, § 2(b), 28 DCR 277; Mar. 16, 1982, D.C. Law 4-78, § 8(a), 29 DCR 49; Mar. 13, 1985, D.C. Law 5-140, § 2, 31 DCR 5755; Oct. 5, 1985, D.C. Law 6-43, § 2(a), 32 DCR 4484; July 24, 1986, D.C. Law 6-126, § 2, 33 DCR 3211; July 24, 1986, D.C. Law 6-127, § 2, 33 DCR 3213; Sept. 13, 1986, D.C. Law 6-142, § 2, 33 DCR 4369; Mar. 2, 1991, D.C. Law 8-190, § 2(a), 37 DCR 6721; July 13, 1991, D.C. Law 9-12, § 2(a), 38 DCR 3376; Nov. 25, 1993, D.C. Law 10-65, § 201, 40 DCR 7351; July 23, 1994, D.C. Law 10-136, § 5, 41 DCR 3006; Sept. 22, 1994, D.C. Law 10-172, § 2, 41 DCR 5152; May 16, 1995, D.C. Law 10-255, § 2(a), 41 DCR 5193; June 10, 1998, D.C. Law 12-124, §§ 101(n)(2), 101(n)(3), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-612.4, 1-612.5, 1-612.11, 1-618.17, and 1-711.

Effect of amendments. — D.C. Law 12-124 repealed (a)(4); and in (b), inserted “the Judges’ Retirement Fund, established by § 1-714.

Temporary amendment of section. — Section 2(a) of D.C. Law 12-36 repealed (a)(4).

Section 5(b) of D.C. Law 12-36 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Comprehensive Merit Personnel Act Pay Limit Amendment Act of 1997, whichever occurs first.

Section 2 of D.C. Law 12-46 amended (b) to read as follows:

“(b) The pay of an individual receiving an annuity under any District government civilian retirement system selected for employment in the District government on or after January 1, 1980, shall be reduced by the amount of annuity allocable to the period of employment as a reemployed annuitant. No reduction shall be made to the pay of a reemployed individual for any retirement benefits received by the reemployed individual pursuant to §§ 1-627.3 through 1-627.12, § 4-629 (e), the Judges’ Retirement Fund, established by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122; D.C. Code § 1-714), or the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994.”

Section 4(b) of D.C. Law 12-46 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Comprehensive Merit Personnel Act Annuity Offset Amendment Act of 1997, whichever occurs first.

Temporary addition of section. — Section 2(b) of D.C. Law 12-36, as amended by § 61 of D.C. Law 12-81, added a new § 1-612.3a to read as follows:

“§ 1-612.3a. Compensation policy; higher compensation level authorized.

“(a) The higher compensation level authorized by the Career and Excepted Services Compensation System Reform Emergency Ap-

proval Resolution of 1997 shall only apply to individuals who have received an evaluation of at least excellent or outstanding based on a performance evaluation conducted after the effective date of the Career and Excepted Services Compensation System Reform Emergency Approval Resolution of 1997.

“(b) The performance evaluation contained in subsection (a) of this section shall only apply to employees employed by the District as of the effective date of the Career and Excepted Services Compensation System Reform Emergency Approval Resolution of 1997.”

Section 5(b) of D.C. Law 12-36 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Comprehensive Merit Personnel Act Pay Limit Amendment Act of 1997, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

For temporary addition of § 1-612.3a, § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

Section 5 of D.C. Act 12-179 provides for the application of the act.

For temporary amendment of section, § 2 of the Comprehensive Merit Personnel Act Annuity Offset Emergency Amendment Act of 1997 (D.C. Act 12-123, August 1, 1997, 44 DCR

4652), and § 2 of the Comprehensive Merit Personnel Act Annuity Offset Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-183, October 30, 1997, 44 DCR 6958).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-101. — Law 3-101 was introduced in Council and assigned Bill No. 3-292, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 17, 1980 and July 1, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-223 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-43. — Law 6-43 was introduced in Council and assigned Bill No. 6-68, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 25, 1985 and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-61 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-126. — Law 6-126 was introduced in Council and assigned Bill No. 6-374, which was referred to the Committee Government Operations and reassigned to the Committee of the Whole. The Bill was adopted on first and second readings on April 29, 1986 and May 13, 1986, respectively. Signed by the Mayor on May 16, 1986, it was assigned Act No. 6-162 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-127. — Law 6-127 was introduced in Council and assigned Bill No. 6-426, which was retained by Council. The Bill was adopted on first and second readings on April 15, 1986 and April 29, 1986, respectively. Signed by the Mayor on May 16, 1986, it was assigned Act No. 6-163 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-142. — Law 6-142 was introduced in Council and assigned Bill No. 6-427, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-184 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-190. — See note to § 1-622.14.

Legislative history of Law 9-12. — Law 9-12 was introduced in Council and assigned Bill No. 9-149, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-65. — Law 10-65, the "Omnibus Spending Reduction Act of 1993," was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Legislative history of Law 10-136. — Law 10-136, the "Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-113, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-241 and transmitted to both Houses of Congress for its review. D.C. Law 10-136 became effective on July 23, 1994.

Legislative history of Law 10-172. — Law 10-172, the "Comprehensive Merit Personnel Reemployed Annuitant Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-571, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-292 and transmitted to both Houses of Congress for its review. D.C. Law 10-172 became effective on September 22, 1994.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

Legislative history of Law 12-36. — Law 12-36, the "Comprehensive Merit Personnel Act Pay Limit Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-266. The Bill was adopted on first and

second readings on June 17, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-132 and transmitted to both Houses of Congress for its review. D.C. Law 12-36 became effective on October 23, 1997.

Legislative history of Law 12-46. — Law 12-46, the “Comprehensive Merit Personnel Act Annuity Offset Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-302, which was retained by Council. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-161 and transmitted to both Houses of Congress for its review. D.C. Law 12-46 became effective on October 3, 1997.

Legislative history of Law 12-124. — See note to § 1-603.1.

Effective date. — Section 10 of D.C. Law 4-78 provided that the amendment effected by § 8(a) shall be deemed to have taken effect on October 1, 1981, and no employee affected by subsection (a)(2), as amended by the act, shall suffer a reduction in pay.

References in text. — The “Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994”, referred to in (b), is D.C. Law 10-136, which is codified as this section, § 4-618.2, and § 4-629, and in notes to § 4-618.2 and this section.

Applicability of § 101(n) of D.C. Law 12-124. — See note to § 1-612.2.

Mayor authorized to enter agreements to modify health benefits contracts. — Section 3 of D.C. Law 8-190 provided that, notwithstanding any provision of § 1-1181.1 et seq., the Mayor may enter into agreements to modify any health benefits contracts that were awarded under the procedures for competitive sealed proposals prior to December 31, 1990, in order to provide for continued coverage under § 1-622.14.

Mayor authorized to issue rules. — Section 3 of D.C. Law 9-12 provided that the Mayor shall issue rules to implement the provisions of this act.

Overtime pay. — Section 140 of Title I of Act of October 29, 1993, 107 Stat. 1349, 1350, Pub.

L. 103-127, provided that § 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, effective December 24, 1973 (87 Stat. 790, D.C. Code Sec. 1-242(3)), is amended to provide that the section does not prohibit the District from paying an employee overtime pay in accordance with section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207).

Constitutionality of section. — This section, as applied to retired military personnel employed by the District, does not violate the Supremacy Clause or the Contract Clause of the federal constitution. *Barnes v. District of Columbia*, 611 F. Supp. 130 (D.D.C. 1985).

Section 1-242(3) does not guarantee benefits equal to those under previously applicable federal compensation system. — The “at least equal to” language in § 1-242(3) does not require the District to develop a compensation system for its employees guaranteeing benefits equal to those enjoyed under the previously applicable federal compensation system. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

But provides one-time floor for benefits. — The “at least equal to” language in paragraph (3) of § 1-242 provides a floor for benefits under the District of Columbia Comprehensive Merit Personnel Act, equal to those applicable to federal employees “immediately prior” to enactment of District personnel legislation, but does not mandate continuing equality of all benefits including pay. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Employees involuntarily transferred to District employment not entitled to federal pay increase. — Employees involuntarily transferred from federal to District employment pursuant to the Self-Government Act are not entitled to a 9.1% federal pay increase instead of the 5% increase received by District employees under the Comprehensive Merit Personnel Act. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

Cited in *District of Columbia v. Fraternal Order of Police*, App. D.C., 691 A.2d 115 (1997).

§ 1-612.4. Compensation system for Career and Excepted Services — Established.

(a) The Mayor shall develop, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, a new compensation system for all employees in the Career and Excepted Services. Any comments that the Board of Education or the Board of Trustees of the University of the District of Columbia wish to make on the proposed system

shall be presented along with the proposed pay system submitted by the Mayor.

(b) This new system shall include, but need not be limited to, provisions for basic pay, pay increases based on quality and length of service, premium pay, allowances, and severance pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations in the development of the new compensation system for Career Service employees.

(d) The Mayor shall submit any proposed new compensation system to the Council for approval under the provisions of § 1-612.6. The submission shall include proposed dates on which the new compensation system shall become effective.

(e) Until such time as a new compensation system is approved, the compensation system, including the salary and pay schedules, in effect on December 31, 1979, shall continue in effect: Provided, that pay adjustments shall be made in accordance with the policy stated in § 1-612.3.

(f) For the purpose of subsections (a) through (d) of this section, the term compensation system shall not include salary or pay schedules.

(g) An employee who is under indictment or who is charged by information with or who has been convicted of a felony related to his or her employment duties shall not be eligible for benefits under an Easy Out, Early Out, or similar Retirement Incentive Program; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his ineligibility shall be eligible for all benefits as if that employee has never been indicted for or charged by information with a felony.

(h) For the purposes of this subchapter, the term "felony" means an offense that is punishable by a term of imprisonment that exceeds one year. (1973 Ed., § 1-341.4; Mar. 3, 1979, D.C. Law 2-139, § 1104, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(c), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(m), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-94, § 2(a), 37 DCR 782; May 24, 1996, D.C. Law 11-122, § 2, 43 DCR 1540; Aug. 1, 1996, D.C. Law 11-152, § 302(l), 43 DCR 2978.)

Section references. — This section is referred to in §§ 1-602.2, 1-603.1, and 1-612.6.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 8-94. — Law 8-94 was introduced in Council and assigned Bill No. 8-352, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-145 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-25. — Law 11-25, the "Merit Personnel Early Out Retirement

Revisions Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-211. The Bill was adopted on first and second readings on April 4, 1995, and May 2, 1995, respectively. Signed by the Mayor on May 15, 1995, it was assigned Act No. 11-53 and transmitted to both Houses of Congress for its review. D.C. Law 11-25 became effective on July 14, 1995.

Legislative history of Law 11-122. — Law 11-122, the "Merit Personnel Early Out Retirement Revisions Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-226, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 6, 1996, and March, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-229 and transmitted to

both Houses of Congress for its review. D. C. Law 11-122 became effective on May 24, 1996.

Legislative history of Law 11-152. — See note to § 1-602.2.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995. — Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Disapproval of new compensation system for employees in Career and Excepted Services. — Pursuant to Resolution 7-345, the “Establishment of the New Compensation System for Employees in the Career and Excepted Services Disapproval Resolution of 1988”, effective November 15, 1988, the Council disapproved the Career and Excepted Services Compensation System submitted to Council by the Mayor on September 21, 1988.

District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation System Changes Emergency Approval Resolution of 1991. — Pursuant to Resolution 9-109, effective October 4, 1991, the Council approved, on an emergency basis, changes to the compensation system to authorize the Mayor to establish a retirement incentive program for certain District government employees.

Adjustment of Pay Rates for Career, Excepted and Executive Service Employees. — See Mayor’s Order 86-188, October 21, 1986.

Counsel fees. — Counsel fees may be awarded to an employee, whom the District hired after January 1, 1980, and who successfully contested an adverse personnel action against him before the Office of Employee Appeals and the Superior Court. *Zenian v. District of Columbia Office of Employee Appeals*, App. D.C., 598 A.2d 1161 (1991).

Cited in American Fed’n of Gov’t Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); *District of Columbia Metro. Police Dep’t v. Broadus*, App. D.C., 560 A.2d 501 (1989); *Hilbert v. District of Columbia*, 788 F. Supp. 597 (D.D.C. 1992), modified, 23 F.3d 429 (D.C. Cir. 1994).

§ 1-612.5. Same — Periodic review.

(a) The Mayor, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, shall provide for a periodic review of the basic compensation system, in order to improve the system and provide continuing conformity with the policy established by § 1-612.3.

(b) These reviews of compensation shall include, but need not be limited to, review of the adequacy of the rates of basic pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations of employees under his or her jurisdiction in the periodic reviews of the compensation system(s).

(d) The Mayor, in consultation with the personnel authorities named in subsection (a) of this section, shall consider, on an annual basis, changes in the compensation system or systems and in the salary and pay schedules under such system or systems, and shall submit adjustments, if any, to the Council pursuant to § 1-612.6. The submission to the Council shall include proposed dates on which the adjustments shall become effective.

(e) If, because of economic conditions, the pendency of collective bargaining, or budgetary constraints due to limited appropriations or revenues, the Mayor should, in any year, consider it inappropriate to submit a proposed change, or to make the adjustment in the salary or pay schedules pursuant to subsection (d) of this section, an alternative plan may be submitted with respect to such

changes or adjustments as the Mayor considers appropriate with a statement of the reasons therefor.

(f) Repealed. (1973 Ed., § 1-341.5; Mar. 3, 1979, D.C. Law 2-139, § 1105, 25 DCR 5470; Mar. 4, 1981, D.C. Law 3-130, § 2(d), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(n), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-94, § 2(b), 37 DCR 782; Aug. 1, 1996, D.C. Law 11-152, § 302(m), 43 DCR 2978; Mar. 26, 1999, D.C. Law 12-175, § 2201, 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-612.6 and 1-624.41.

Effect of amendments. — D.C. Law 12-175 deleted “on September 30, 1980, and on the 1st day in September that the council is in session, of each year thereafter” following “§ 1-612.6” in (d).

Emergency act amendments. — For temporary amendment of section, see § 2 of the Police Officer Pay Increase Emergency Amendment Act of 1997 (D.C. Act 12-142, July 18, 1997, 44 DCR 4369), and § 2 of the Police Officers Pay Increase Emergency Amendment Act of 1998 (D.C. Act 12-408, July 13, 1998, 45 DCR 4837).

For temporary amendment of section, see § 2 of the Department of Corrections Pay Increase Emergency Amendment Act of 1998 (D.C. Act 12-327, April 24, 1998, 45 DCR 2794).

For temporary amendment of section, see § 2 of the Career, Educational, and Excepted Service Nonunion Employees Salary Increase Emergency Amendment Act of 1998 (D.C. Act 12-377, June 5, 1998, 45 DCR 4463).

For temporary amendment of section, see § 2(b) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Authorization Emergency Amendment Act of 1998 (D.C. Act 12-381, June 22, 1998, 45 DCR 4474).

For temporary amendment of section, see § 1801 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1801 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 8-94. — See note to § 1-612.4.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions

of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Metropolitan Police Department pay and benefit performance. — Pursuant to §§ 2 and 3 of D.C. Law 6-145, the “Metropolitan Police Department Pay and Benefit Conformance Act of 1986”, effective September 13, 1986, the Council approved changes to the compensation system for Career and Executive Service employees not covered by collective bargaining.

Sections 2 and 3 of D.C. Law 6-128, effective July 24, 1986, had also approved changes to the compensation system for Career and Executive Service employees not covered by collective bargaining. Section 4(b) of D.C. Law 6-128 provided that the act shall expire on the 180th day of its having taken effect.

D.C. Fire Department Compensation and Salary Schedule Adjustment. — Pursuant to §§ 2-4 of D.C. Law 7-192, the “D.C. Fire Department Compensation System and Salary Schedule Adjustment Act of 1988”, effective March 6, 1989, the Council approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining.

Sections 2-4 of D.C. Law 7-196, effective March 16, 1989, had also approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining. Section 5(b) provided that the act shall expire on the 225th day of its having taken effect.

Approval of continued payment of the base retention differential and retentive incentive to non-union uniformed members of Police force and Fire Department. — Pursuant to Resolution 8-255, the “Base Retention Differential & Retention Incentive Payment Continuation Emergency Resolution of 1990”, effective July 27, 1990, the Council approved the continued payment of the base retention differential and retention incentive to non-union uniformed members of the Police force and Fire Department who are receiving or

establish eligibility to receive the base retention differential or retention incentive on or before October 6, 1990.

Provision permitting Mayor to consider budgetary constraints when adjusting salary or pay schedules valid. — Subsection (e) of this section, permitting the Mayor to take into consideration, among other things, “budgetary constraints due to limited appropriations or revenues” when making salary or pay

schedule adjustments, is not invalid on the basis that the resultant adjustments might not match the federal personnel system pay provisions because the “at least equal” language of paragraph (3) of § 1-242 provides a guideline as to a one-time floor for benefits rather than a guarantee of continuing equality of benefits between the federal and the District compensation systems. *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983).

§ 1-612.6. Same — Review by the Council of the District of Columbia.

(a) If the Council by resolution approves, without revision, the new compensation system or systems, or any later changes in such system or systems or in the salary or pay schedules under the system or systems proposed in accordance with § 1-612.4 or § 1-612.5, the schedules shall become effective on the dates specified in the schedule submitted by the Mayor as provided in subsection (d) of § 1-612.5. If the Council takes no action on the Mayor’s proposed change within 60 calendar days of the submission thereof, such change shall be deemed to have been approved by the Council on the day next following the expiration of this 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(b) If the Council revises the proposal, it shall return the proposal with its revisions to the Mayor. If the Mayor concurs in the revisions, the provisions of the compensation plan as revised shall become effective on the dates specified by the Council in the resolution revising the compensation plan, as provided in subsection (a) of this section.

(c) If the Mayor does not concur in any 1 or more of the revisions recommended by the Council, including the Council’s recommendation as to the dates on which the pay changes shall become effective, the Mayor shall return the revisions within 10 days to the Council, with a statement of the Mayor’s reasons for not concurring. If the Council, by a two-thirds vote of the members present and voting, adopts a resolution insisting upon any 1 or more of the original revisions, the Council shall return the proposal and the revisions upon which the Council insists to the Mayor within 10 days of the Council’s receipt of the Mayor’s statement of reasons for not concurring in the revisions recommended by the Council. If any revisions insisted upon by the Council, including the Council’s recommendation as to the dates on which the pay changes should become effective, shall result in a greater cost to the District government than the Mayor’s original proposal, the Council shall adopt an act to provide a source of funding to cover the increased cost. The pay provisions of the compensation plan so adopted shall become effective on the dates specified by the Council in the resolution revising the new compensation system. If the two-thirds vote does not prevail, or the Council does not act within 10 days of the Council’s receipt of the Mayor’s statement of reasons for not concurring in the revisions recommended by the Council, the Mayor’s original proposal, with the revisions proposed by the Council in which the Mayor has concurred, shall become effective. The 10 days for Council review

shall not include Saturdays, Sundays, legal holidays, and days of Council recess.

(d) Retroactive pay is payable by reason of an increase in the salary or pay schedules under this section only where:

(1) The individual is in the service of the District of Columbia government on the date of final action by the Council on the increase; or

(2) The individual retired or died during the period beginning on the effective date of the increase and ending on the date of final action by the Council on the increase, and only for the services performed during that period.

(e) Repealed. (1973 Ed., § 1-341.6; Mar. 3, 1979, D.C. Law 2-139, § 1106, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(e), 28 DCR 277; Aug. 1, 1985, D.C. Law 6-15, § 7(c), 32 DCR 3570; Mar. 15, 1990, D.C. Law 8-94, § 2(c), 37 DCR 782.)

Section references. — This section is referred to in §§ 1-609.58, 1-612.4, 1-612.5, and 1-624.41.

Emergency act amendments. — For temporary approval of proposed changes to the Career and Excepted Service compensation system and temporary authority of the Mayor to establish retirement incentive programs for certain employees, see § 403 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary authority of the Mayor to establish retirement incentive programs for certain employees subject to transfer to the Health and Hospitals Public Benefit Corporation, see § 403 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary approval of proposed changes to the Career and Excepted Service compensation system and temporary authorization of the Mayor to establish a voluntary severance incentive program for certain employees, see § 404 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary authority of the Mayor to establish a voluntary severance incentive program for certain employees subject to transfer to the Health and Hospitals Public Benefit Corporation, see § 404 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary prohibition on re-employment with the District government, see § 405 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and § 405 of the Health and Hospitals Public Benefit Corporation Congress-

sional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Section 501 of D.C. Act 12-39 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 6-15. — See note to § 1-608.1.

Legislative history of Law 8-94. — See note to § 1-612.4.

Police service schedule approved. — Section 4 of D.C. Law 4-108 approved, effective December 14, 1981, the police service schedule, as transmitted by the Mayor on December 7, 1981.

Metropolitan Police Department pay and benefit performance. — See note to § 1-612.5.

Fire service schedule approved. — Section 4 of D.C. Law 4-108 approved, effective February 22, 1982, the fire service schedule, as transmitted by the Mayor on February 19, 1982.

D.C. Fire Department Compensation and Salary Schedule Adjustment. — Pursuant to §§ 2-4 of D.C. Law 7-192, the “D.C. Fire Department Compensation System and Salary Schedule Adjustment Act of 1988”, effective March 6, 1989, the Council approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining.

Sections 2-4 of D.C. Law 7-196, effective March 16, 1989, had also approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining. Section 5(b) provided that the act shall expire on the 225th day of its having taken effect.

Optical and dental benefits. — Section 401(a) of D.C. Law 11-52 provided that the

optical and dental benefits for Career and Excepted Services employees not covered by collective bargaining, approved pursuant to Resolution 6-305, are reduced to a level that will allow maximum benefits to continue within available appropriations.

Section 401(b) of D.C. Law 11-52 provided that the Mayor shall renegotiate the optical and dental benefits contract to implement subsection (a) of this section.

Approval of changes to compensation system for employees in Career Service and Excepted Service. — Pursuant to Resolution 5-955, the "Compensation System Changes for Career Service and Excepted Service Employees Approval Resolution of 1984," effective December 4, 1984, the Council approved changes to the compensation system for employees in the Career Service and Excepted Service not covered by collective bargaining transmitted by the Mayor on November 7, 1984.

Pursuant to Resolution 6-305, the "Changes to the Compensation System and to the Pay Schedules for Career Service and Excepted Service Employees Approval Resolution of 1985," effective September 24, 1985, the Council approved changes to the compensation system and the pay schedules for employees in the Career Service and Excepted Service not covered by collective bargaining transmitted by the Mayor on September 5, 1985, and a provision for an optical and dental insurance package for those employees.

Pursuant to Resolution 6-830, the "Career and Excepted Service Employees Pay Adjustment Approval Resolution of 1986," effective October 7, 1986, the Council approved changes to the compensation system for employees in the Career Service and Excepted Service not covered by collective bargaining transmitted to the Mayor on September 2, 1986.

Disapproval of salary and pay schedule for employees in the Excepted Service. — Pursuant to Resolution 7-338, the "Salary and Pay Schedule for Employees in the Excepted Service Disapproval Resolution of 1988," effective November 15, 1988, the Council disapproved the Excepted Service Salary Schedule, authorized to take effect on the first day of the first pay period beginning on or after October 1, 1988.

Approval of pay adjustment for employees in the Career and Excepted Services. — Pursuant to Resolution 7-339, the "Pay Adjustment for Employees in the Career and Excepted Services Not Covered by Collective Bargaining Approval Resolution of 1988," effective November 15, 1988, the Council approved the recommendation to the Council regarding the fiscal year 1989 pay adjustment for employees in the Career and Excepted Services not cov-

ered by collective bargaining, transmitted by the Mayor on September 27, 1988.

Revision of Fiscal Year 1990 pay adjustment for employees in Career and Excepted Services not covered by collective bargaining. — Pursuant to Resolution 8-126, the "Career and Excepted Service Salary and Pay Schedules Revision Resolution of 1989", effective November 7, 1989, the Council revised the fiscal year 1990 pay adjustment for employees in the Career and Excepted Services not covered by collective bargaining.

Approval of continued payment of the base retention differential and retentive incentive to non-union uniformed members of Police force and Fire Department. — Pursuant to Resolution 8-255, the "Base Retention Differential & Retention Incentive Payment Continuation Emergency Resolution of 1990", effective July 27, 1990, the Council approved the continued payment of the base retention differential and retention incentive to non-union uniformed members of the Police force and Fire Department who are receiving or establish eligibility to receive the base retention differential or retention incentive on or before October 6, 1990.

Revision of pay adjustment schedules for employees in Career, Executive and Excepted Services. — Pursuant to Resolution 8-287, the "Career, Executive & Excepted Services Salary & Pay Schedules Revision Resolution of 1990", effective November 30, 1990, the Council revised the Fiscal Year 1991 pay adjustment for employees in the Career, Executive, and Excepted Services not covered by collective bargaining.

District of Columbia Government Comprehensive Merit Personnel Act of 1978 Additional Income Allowance Compensation System Changes Emergency Disapproval Resolution of 1992. — Pursuant to Resolution 9-272, effective July 10, 1992, the Council disapproved, on an emergency basis, changes to the compensation system to authorize the Mayor to establish an additional income allowance for the allied medical series (except the 601 series), registered nurses, licensed practical nurses, and pharmacists.

Fiscal Year 1995 Spending Reduction Conditional Approval Emergency Resolution of 1994. — Pursuant to Resolution 10-423, effective August 5, 1994, the Council approved, on an emergency basis, the proposed Easy Out and Early Out Retirement Incentive Programs for Career and Excepted Service Employees under the Mayor's personnel authority and the District of Columbia General Hospital Operational and Financial Viability Plan.

Fiscal Year 1995 Spending Reduction Amendment Approval Emergency Resolution of 1994. — Pursuant to Resolution 10-455, effective November 1, 1994, the Council

approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

District Government Voluntary Severance Incentive Program Approval Emergency Resolution of 1994. — Pursuant to Resolution 10-490, effective December 6, 1994, the Council approved, on an emergency basis, the proposed Voluntary Severance Incentive Program for Career and Excepted Service Employees.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995. — Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Contract Appeals Board Career and Excepted Service Compensation Approval Resolution of 1998. — Pursuant to Resolution 12-396, effective March 3, 1998, the Council approved the compensation for the Contract Appeals Board Career and Excepted Services.

Office of Emergency Preparedness Executive Service Compensation Approval Resolution of 1998. — Pursuant to Resolution 12-397, effective March 3, 1998, the Council approved the proposed compensation submitted by the Mayor for the Director of the Office of Emergency Preparedness.

Career and Excepted Service Employees Compensation System Changes for Fire Fighters Approval Emergency Resolution of 1998. — Pursuant to Resolution 12-434, effective March 3, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for uniformed members of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Chief of the Metropolitan Police Department Salary Adjustment Approval Resolution of 1998. — Pursuant to Resolution 12-471, effective April 21, 1998, the Council approved a salary adjustment for the Chief of the Metropolitan Police Department.

Career, Educational, and Excepted Service Nonunion Employee Emergency Compensation System Change Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-487, effective June 2, 1998, the Council approved, on an emergency basis, a compensation system change for Career, Educational, and Excepted Service nonunion employees.

Career and Excepted Services Compensation System Changes for Nonunion Officers and Members of the Metropolitan

Police Department Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-506, effective May 19, 1998, the Council approved, on an emergency basis, the proposed Career and Excepted Services compensation system changes for nonunion officers and members of the Metropolitan Police Department.

Contract Appeals Board Career and Excepted Service Compensation Changes Approval Resolution of 1998. — Pursuant to Resolution 12-583, effective July 7, 1998, the Council approved the proposed compensation submitted by the Mayor for Judge Jonathan D. Zischkau, Administrative Judge of the Contract Appeals Board.

Career and Excepted Service Employees Compensation System Changes for Metropolitan Police Officers Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-558, effective June 16, 1998, the Council approved the Career and Excepted Service Employees compensation system changes for the Metropolitan Police Officers.

Metropolitan Police Department Civilian Communications Supervisors Pay Increase Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-766, effective November 10, 1998, the Council approved, on an emergency basis, the proposed compensation changes for civilian employees of the District of Columbia Metropolitan Police Department Communications Division not covered by collective bargaining.

Career and Excepted Service Employees Compensation System Changes for Firefighters Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-778, effective November 10, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for uniformed members of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Career and Excepted Services Compensation System Changes for Nonunion Employees of the Commission on Mental Health Services Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-840, effective December 15, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for nonunion employees of the Commission on Mental Health Services.

Attorney Retention Allowance Compensation System Change for Attorneys in the Office of the Corporation Counsel Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-859, effective December 15, 1998, the Council approved, on an emergency basis, a compensation system change that authorizes the Mayor to establish and to pay an attorney retention allowance of up to

20% for series DS-905 attorneys in the Office of the Corporation Counsel.

Career and Expected Service Employees Compensation System Changes for DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) Employees Emergency Approval Resolution of Fiscal Year 1999. — Pursuant to Resolution 12-846, effective December 15, 1998, the Coun-

cil approved, on an emergency basis, the proposed compensation system changes for civilian employees in series DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Cited in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 1-612.7. Executive pay plan.

Repealed.

(1973 Ed., § 1-341.7; Mar. 3, 1979, D.C. Law 2-139, § 1107, 25 DCR 5740; Aug. 1, 1985, D.C. Law 6-15, § 7(d), 32 DCR 3570; Apr. 12, 1997, D.C. Law 11-259, § 304(d), 44 DCR 1423; June 10, 1998, D.C. Law 12-124, § 101(n)(4), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(n) of D.C. Law 12-124. — See note to § 1-612.2.

§ 1-612.8. Compensation — Members of boards and commissions.

(a) Each member of any board or commission who receives compensation or reimbursement of expenses on January 1, 1980, shall receive such rates of compensation or reimbursement of expenses as are provided in existing law, rule, regulation, or order, or in this chapter, except as may be modified from time to time by rules and regulations published pursuant to subsection (b) of this section.

(b) The Mayor of the District of Columbia is authorized to establish by rule and regulation the rates of compensation or reimbursement of expenses for members of any board or commission, including any board or commission established after January 1, 1980. Any such rules and regulations proposed by the Mayor shall be transmitted to the Council of the District of Columbia for a 30-day (excluding Saturdays, Sundays, holidays, and days on which the Council of the District of Columbia is on recess) review period. Such rules and regulations shall become effective only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays, holidays, and days on which the Council of the District of Columbia is on recess) from the date of the Mayor's submission, a resolution disapproving such rules and regulations in whole or in part. Notwithstanding the provisions of § 1-604.5, rules and regulations published under this subsection shall be effective no earlier than 30 days after their publication in the District of Columbia Register.

(c)(1) Notwithstanding subsections (a) and (b) of this section, or any other provision of law, members of boards and commissions shall not be compensated for time expended in the performance of official duties; except that members of

the following boards and commission shall be entitled to compensation as currently authorized by law:

- (A) Public Service Commission;
- (B) Contract Appeals Board;
- (C) Rental Housing Commission;
- (D) Board of Parole;
- (E) The Chairperson of the Taxicab Commission; and
- (F) The District of Columbia Retirement Board.

(2) Beginning April 1, 1995, members of the following boards and commissions shall be entitled to compensation as follows:

(A) Board of Zoning Adjustment members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each board member per year.

(B) Office of Employee Appeals members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each member per year.

(C) Police and Firemen's Retirement and Relief Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$8,000 for each board member per year.

(D) Public Employee Relations Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each board member per year.

(E) Board of Real Property Assessments and Appeals members shall be entitled to compensation at the hourly rate of \$25 per meeting.

(F) Redevelopment Land Agency members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$1,200 for each member per year.

(G) Zoning Commission members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each commission member per year.

(H) Historic Preservation Review Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$1,800 for each board member per year.

(I) Alcoholic Beverage Control Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$2,500 for each board member per year.

(J) The Chairpersons of the boards and commissions specified in this paragraph who are public members shall be entitled to an additional compensation of 20% above the annual maximum, except that no maximum shall apply to the compensation paid to the chairperson of the Board of Real Property Assessments and Appeals.

(d) Notwithstanding subsections (a), (b), and (c) of this section, or any other provision of law, members of boards or commissions shall not be entitled to reimbursement for expenses; except that transportation, parking, or mileage expenses incurred in the performance of official duties may be reimbursed, not to exceed \$15 per meeting or currently authorized amounts, whichever is less. (1973 Ed., § 1-341.8; Mar. 3, 1979, D.C. Law 2-139, § 1108, 25 DCR 5740; Aug.

7, 1980, D.C. Law 3-81, § 2(k), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 801(b), 42 DCR 3684; Mar. 20, 1998, D.C. Law 12-60, § 101, 44 DCR 7378.)

Cross references. — As to Board of Funeral Directors, see § 2-2803.

As to Board of Consumer Claims Arbitration for the District of Columbia, see § 40-1303.

As to the Employee Deferred Compensation Program, see § 47-3601.

Section references. — This section is referred to in §§ 1-348, 1-602.2, 1-603.1, 1-606.1, 1-612.12, 1-613.3, 1-1143, 1-1304, 1-2213, 2-256, 2-429, 2-604, 2-2725, 2-2803, 2-3304.6, 2-3403, 2-3904, 2-3906, 5-803, 31-1604, 32-353, 36-342.1, 36-1315, 37-104, 40-1303, 40-1705, 45-3203, 47-825.1, 47-2853.9, 47-3601, 47-4003, and 49-401.

Effect of amendments. — D.C. Law 12-60, in (c)(2)(E), deleted “not to exceed \$10,000 for each board member per year” from the end; and, in (c)(2)(J), added “except that no maximum shall apply to the compensation paid to the chairperson of the Board of Real Property Assessments and Appeals.”

Temporary amendment of section. — D.C. Law 12-59, in (c)(2)(E), deleted “not to exceed \$10,000 for each board member per year” from the end; and, in (c)(2)(J), added “except that no maximum shall apply to the compensation paid to the chairperson of the Board of Real Property Assessments and Appeals.”

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Section 3 of D.C. Law 12-125 added a (c)(2)(K) to read as follows:

“(c)(2) Beginning April 1, 1995, members of the following boards and commissions shall be entitled to compensation as follows:

“(K) Notwithstanding subparagraphs (E) and (J) of this paragraph, if during Fiscal Year 1996 or Fiscal Year 1997 the compensation limits in these sections would be exceeded due to meetings of the Board of Real Property Assessments and Appeals for the District of Columbia conducted between August 1, 1996, and November 15, 1996, the Mayor is authorized to compensate the members of the Board for the additional meetings and time required to process the assessments and conduct appeals, at a rate of \$25 per hour per meeting, not to exceed a total, for both fiscal years, of \$4,000 for members and \$6,000 for the Chairman.”

Section 6(b) of D.C. Law 12-125 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Real Property Tax Reassessment Congressional Adjournment Emergency Act of 1997 (D.C. Act 12-11, March 3, 1997, 44 DCR 1741), and see § 3 of the Real Property Tax Reassessment Second Emergency Act of 1997 (D.C. Act 12-244, January 13, 1998, 45 DCR 652).

Section 5 of D.C. Act 12-11 provides for the application of the act.

Section 6 of D.C. Act 12-244 provided for application of the act.

For temporary amendment of section, see § 101 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 101 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

For temporary amendment of section, see § 3 of the Real Property Tax Reassessment Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-293, February 27, 1998, 45 DCR 1758).

Section 6 of D.C. Act 12-293 provided for the application of the act.

For temporary amendment of section, see § 3 of the Real Property Tax Reassessment and Cold Weather Eviction Emergency Amendment Act of 1999 (D.C. Act 13-18, February 17, 1999, 46 DCR 2354).

Section 6 of D.C. Act 13-18 provides for the retroactive application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — See note to § 1-603.1.

Legislative history of Law 11-207. — Law 11-207, the “Real Property Tax Reassessment Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-768, which was retained by Council. The Bill was adopted

on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 6, 1996, it was assigned Act No. 11-380 and transmitted to both Houses of Congress for its review. D.C. Law 11-207 became effective on April 9, 1994.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on

September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-125. — Law 12-125, the “Real Property Tax Reassessment Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-473. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-275 and transmitted to both Houses of Congress for its review. D.C. Law 12-125 became effective on June 10, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 1-612.9. Same — Mayor and members of Council.

(a) Repealed.

(b) The Chairman of the Council shall receive compensation in an amount equivalent to the highest rate of basic pay authorized for an executive agency head, which shall be made in equal and periodic installments. Each member of the Council other than the chairman shall be paid at an annual rate of \$10,000 less than the annual compensation established for the Chairman.

(c) Repealed. (1973 Ed., § 1-341.9; Mar. 3, 1979, D.C. Law 2-139, § 1109, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-175, §§ 2, 3(a), 33 DCR 7232; Mar. 16, 1995, D.C. Law 10-225, § 2, 41 DCR 8132; June 10, 1998, D.C. Law 12-124, § 101(n)(5), 45 DCR 2464.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-113, 1-602.2, 1-637.1, and 2-2503.

Effect of amendments. — D.C. Law 12-124 repealed (a) and (c).

Temporary amendment of section. — Section 2(d) of D.C. Law 12-36 amended (b) to read as follows:

“(b) The Chairman of the Council shall receive compensation in an amount equivalent to the rate of basic pay he or she received on June 3, 1997, which shall be made in equal and periodic installments. Each member of the Council other than the Chairman shall be paid at the rate authorized for the members on June 3, 1997, which shall be paid in equal and periodic installments.”

Section 5(b) of D.C. Law 12-36 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of

the Comprehensive Merit Personnel Act Pay Limit Amendment Act of 1997, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

Section 5 of D.C. Act 12-179 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-175. — Law 6-175 was introduced in Council and assigned Bill No. 6-373, which was referred to the Com-

mittee on Government Operations and re-assigned to the Committee of the Whole. The Bill was adopted on first and second readings on September 23, 1986 and October 21, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-168. — Law 10-168, the “Councilmembers’ Salary Freeze Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-681. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Deemed approved without the signature of the Mayor on July 15, 1994, it was assigned Act No. 10-286 and transmitted to both Houses of Congress for its review. D.C. Law 10-168 became effective on August 27, 1994.

Legislative history of Law 10-225. — Law 10-225, the “Councilmembers’ Salary Freeze Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-696, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Deemed approved without the signature of the Mayor on December 20, 1994, it was assigned Act No. 10-365 and transmitted to both Houses of Congress for its review. D.C. Law 10-225 became effective on March 16, 1995.

Legislative history of Law 12-36. — Law

12-36, the “Comprehensive Merit Personnel Act Pay Limit Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-266. The Bill was adopted on first and second readings on June 17, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-132 and transmitted to both Houses of Congress for its review. D.C. Law 12-36 became effective on October 23, 1997.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(n) of D.C. Law 12-124. — See note to § 1-612.2.

Editor’s notes. — Subsection (b) is presented above as it appeared prior to amendment by § 2 of D.C. Law 10-225, as the applicability provisions of § 3 of that act were never given effect by Congress.

Limitation on annual compensation increase for members of Council. — Section 2 of D.C. Law 5-28 provided that notwithstanding the provisions of § 1-612.9, the members of the Council of the District of Columbia shall not receive in excess of a 5% annual compensation increase during the fiscal year ending September 30, 1984, over compensation received in the prior fiscal year.

Request for Congressional action. — Pursuant to § 5 of D.C. Law 10-168 and § 5 of D.C. Law 10-225 the Council requested that the United States Congress enact legislation to repeal § 1-226(c).

§ 1-612.10. Same — Members of the Board of Education.

Notwithstanding any other provisions of law, each member of the District of Columbia Board of Education shall receive a salary of not more than \$15,000 annually; except the President of the Board of Education shall receive not more than \$16,000 annually. These sums shall not increase unless by an act of the Council. (1973 Ed., § 1-341.10; Mar. 3, 1979, D.C. Law 2-139, § 1110, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-175, § 3(b), 33 DCR 7232; Apr. 9, 1997, D.C. Law 11-198, § 301(a), 43 DCR 4569.)

Cross references. — As to terms of office and compensation of members of Board of Education, see § 31-101.

Section references. — This section is referred to in §§ 1-602.2 and 31-101.

Effect of amendments. — D.C. Law 11-198 rewrote the section.

Temporary amendment of section. — Section 301(a) of D.C. Law 11-226 amended the section to read as follows:

“Notwithstanding any other provisions of law, each member of the District of Columbia Board of Education shall receive a salary of not

more than \$15,000 annually; except the President of the Board of Education shall receive not more than \$16,000 annually. These sums shall not increase unless by an act of the Council.”

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 301(a) of

the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-175. — See note to § 1-612.9.

Legislative history of Law 11-198. — Law 11-198, the “FY 1997 Budget Support Act” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and

transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the “Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-229. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

§ 1-612.11. Classification and compensation policies and procedures for educational employees.

(a) The classification of all positions in the Educational Service shall be in accordance with the policies of § 1-612.1.

(a-1) Notwithstanding any other provision of law, rule, or regulation, an employee of the District of Columbia Public Schools shall be:

- (A) Classified as an Educational Service employee;
- (B) Placed under the personnel authority of the Board of Education; and
- (C) Subject to all Board of Education rules.

(2) School-based personnel shall constitute a separate competitive area from nonschool-based personnel who shall not compete with school-based personnel for retention purposes.

(b) In order to carry out the policies of subsection (a) of this section, the District of Columbia Board of Education shall, for educational employees of the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall, for educational employees of the University of the District of Columbia, provide for the development of a classification system covering all positions. The respective Boards shall provide that all positions covered by this classification system are properly evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least 60 calendar days prior to their proposed effective date. Each Board shall hold a public hearing on all such proposals it publishes in the District of Columbia Register prior to its adoption of a classification system or amendment to such system.

(c) Repealed.

(d) Compensation for all employees in the Educational Service shall be fixed in accordance with the policies of paragraphs (1), (2), (3), (4), and (6) of subsection (a) of § 1-612.3.

(e) The new compensation systems authorized by subsection (d) of this section may include, but not be limited to, provisions for basic pay, pay

increases based on quality of and length of service, premium pay, allowances, and severance pay.

(f) Each Board shall provide for appropriate consultations with employee organizations in the development of the new compensation systems.

(g)(1) Each Board shall submit to the Mayor a proposed new compensation system developed pursuant to the provisions of subsections (d) and (e) of this section. Any proposed new compensation system submitted to the Mayor by a Board as required by this subsection shall include proposed dates on which the new compensation system shall become effective. Within 20 days of the submission to the Mayor of a new compensation system proposal by a Board, the Mayor shall transmit the proposal to the Council in the form of a proposed resolution. The Mayor shall append to the proposal a statement that includes:

(A) Detailed reasons why the Mayor supports or opposes the proposal; and

(B) Any adjustments that the Mayor would like to have made to the proposal.

(2) Until the new compensation systems are approved, the compensation systems, including the salary and pay schedules in effect on December 31, 1979, shall continue in effect, provided that pay adjustments shall be made in accordance with the policy stated in § 1-612.3.

(h) The Council shall consider the proposed compensation systems in accordance with its procedures.

(i)(1) Each Board shall provide for the periodic review of its basic compensation systems, in order to improve the system and provide continuing conformity with the policy established by subsection (a) of this section.

(2) These reviews of compensation shall include, but need not be limited to, a review of the adequacy of the rates of basic pay.

(3) Each Board shall provide for appropriate consultations with employee organizations of employees under their respective jurisdiction in the periodic reviews of the compensation system.

(4) Beginning with the year commencing January 1, 1982, each Board shall submit to the Council by no later than October 1st of each year all initial proposed pay changes and adjustments and other proposed changes to the compensation systems if any for approval by resolution under the provisions of this section.

(5) If the Council by resolution approves, without revision, the proposed pay changes, adjustments, or other proposed changes to the compensation system submitted by the Board of Education, such changes shall become effective on the dates specified in the resolution submitted by the Board of Education as provided in paragraph (4) of this subsection. If the Council takes no action on the Board of Education's proposed change or changes within 60 calendar days of the submission thereof, such change or changes shall be deemed to have been approved by the Council on the day next following the expiration of such 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(6) If the Council desires to revise the proposal from the Board of Education, then, within the 60 calendar days for Council review, the Council

may not only disapprove the proposal by resolution according to paragraph (5) of this subsection, but may, also, inform the Board of the Council's suggested revisions to the proposal and, subsequently, the Board may submit a new proposal.

(7) No pay increase for employees of the Board of Education shall vest unless funds for such pay increase are identified in the transmittal from the Board of Education to the Council concerning such increase.

(8) If the Council by resolution approves pay changes, adjustments, and other changes in a compensation system proposed by the Board of Trustees of the University of the District of Columbia, such changes shall become effective on the dates specified in the resolution submitted by the Board of Trustees as provided in paragraph (5) of this subsection. If the Council takes no action on the proposed change submitted by the Board of Trustees of the University of the District of Columbia within 60 calendar days of the submission thereof, such changes shall be deemed to have been approved by the Council on the day next following the expiration of this 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(9) If the Council disapproves the change or changes proposed by the Board of Trustees of the University of the District of Columbia, pursuant to paragraph (8) of this subsection, the Board may submit a new proposal.

(10) Repealed.

(11) Repealed.

(j) Retroactive pay is payable by reason of an increase in the salary or pay schedules under this section only where:

(1) The individual is in the service of the District of Columbia government on the date of final action by the Council on the increase; or

(2) The individual retired or died during the period beginning on the effective date of the increase and ending on the date of final action by the Council on the increase, and only for the services performed during that period.

(3) Repealed. (1973 Ed., § 1-341.11; Mar. 3, 1979, D.C. Law 2-139, § 1111, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(l), 27 DCR 2632; Mar. 5, 1981, D.C. Law 3-150, § 3, 27 DCR 4900; Mar. 16, 1982, D.C. Law 4-78, § 8(b)-(d), 29 DCR 49; Aug. 1, 1985, D.C. Law 6-15, § 7(e), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(o), 33 DCR 7241; May 10, 1989, D.C. Law 7-231, § 3(1), 36 DCR 492; Mar. 15, 1990, D.C. Law 8-94, § 2(d), 37 DCR 782; July 13, 1991, D.C. Law 9-12, § 2(b), 38 DCR 3376; Mar. 5, 1996, D.C. Law 11-98, § 301(d), 43 DCR 5; Aug. 1, 1996, D.C. Law 11-152, § 302(n), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(n)(6), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-602.2, 1-603.1, 1-604.4, 1-606.3, 1-612.1, 31-1235, and 31-1252.

Effect of amendments. — D.C. Law 12-124 repealed (c).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 3-150. — Law 3-150 was introduced in Council and assigned

Bill No. 3-349, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-78. — See note to § 1-612.3.

Legislative history of Law 6-15. — See note to § 1-608.1.

Legislative history of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-94. — See note to § 1-612.4.

Legislative history of Law 9-12. — See note to § 1-612.3.

Legislative history of Law 11-78. — Law 11-78, the "Budget Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-152 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(n) of D.C. Law 12-124. — See note to § 1-612.3.

Mayor authorized to issue rules. — Section 3 of D.C. Law 9-12 provided that the Mayor shall issue rules to implement the provisions of this act.

Basic compensation system adopted. — Section 2 of the Act of March 5, 1981, D.C. Law 3-150, provides that the Council adopts, as the basic compensation system for the Educational Services of the District of Columbia Board of Education and the University of the District of Columbia, the compensation system and pay schedules which were transmitted to the Council by the Mayor on October 17, 1979.

Cost-of-living increase at University of District of Columbia approved. — D.C. Law 4-1 provided that the Council approved a 5% cost-of-living increase in the faculty and administrative salary schedules for the University of District of Columbia to be effective on the 1st

day of the 1st pay period beginning on or after October 1, 1980.

Salary adjustments and bonuses for certain Educational Service employees of University of District of Columbia. — Sections 2-7 of D.C. Law 4-78 authorized salary adjustments effecting a 5% cost-of-living increase for certain Educational Service employees of the University of District of Columbia who are not in any collective bargaining unit, to be effective as of the 1st day of the 1st pay period beginning on or after October 1, 1981, and further authorized a 2% one-time salary bonus in fiscal year 1982 for certain Educational Service employees who are not in any collective bargaining unit.

Pay schedule adjustments for Educational Service employees approved. — D.C. Law 4-1 provided that the Council approved the pay schedule adjustments which were adopted at a special meeting of the District of Columbia Board of Education on December 3, 1980, which schedules provided for an average pay adjustment of 5%, to become effective on the 1st day of the 1st pay period beginning on or after October 1, 1980.

Salary adjustments and bonuses for certain Educational Service employees of District of Columbia Board of Education. — Sections 2-7 of D.C. Law 4-78 authorized salary schedule adjustments effecting a 5% salary adjustment for certain Educational Service employees who are not in any collective bargaining unit, to be effective as of the 1st day of the 1st pay period beginning on or after October 1, 1981, and further authorized a 2% one-time salary bonus in fiscal year 1982 for certain Educational Service employees who are not in any collective bargaining unit.

Increase of hourly rate of work study students approved. — D.C. Law 4-1 provided that the Council approved an increase in the hourly rate of pay for "work study aid I students" to \$3.35, effective January 1, 1981.

University within-grade salary freeze. — Section 1101 of D.C. Law 11-52 provided for the prohibition on the receipt of within-grade salary increases for employees of the University of the District of Columbia for 1 year following the effective date of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994 (D.C. Act 10-400).

For temporary prohibition on the receipt of within-grade salary increases by employees of the University of the District of Columbia, see § 1101 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Compensation system for Educational Service Employees of the University of the District of Columbia. — Pursuant to Resolution 5-957, the "Compensation System Changes

for the Educational Service Employees of the University of the District of Columbia Approval Resolution of 1984," effective December 4, 1984, the Council approved a one-time supplemental bonus to Education Service employees of the University of the District of Columbia not covered by collective bargaining.

Pay schedule adjustments for Educational Service Employees approved. — Pursuant to Resolution 6-18, the "Compensation System Changes for the Educational Service Employees of the Board of Education Approval Resolution of 1985," effective January 29, 1985, the Council approved a one-time supplemental bonus to Educational Service employees of the Board of Education not covered by collective bargaining.

Pay adjustment and compensation system changes for Educational Service Employees approved. — Pursuant to Resolution 6-411, the "District of Columbia Board of Education Educational Service Employees Pay Adjustment and Compensation System Changes Approval Resolution of 1985," effective November 5, 1985, the Council approved the proposed pay adjustment and compensation system changes submitted by the District of Columbia Board of Education adopted by the Board on October 16, 1985, for Educational Service Employees not covered by collective bargaining.

Pay adjustment and compensation system changes for Educational Service Employees of University of District of Columbia approved. — Pursuant to Resolution 6-433, the "University of the District of Columbia Educational Service Employees Pay Adjustment and Compensation System Changes Approval Resolution of 1985," effective November 19, 1985, the Council approved the proposed pay adjustment and compensation system changes submitted by the Board of Trustees of the University of the District of Columbia adopted by the Board on November 7, 1985, for Educational Service employees not covered by collective bargaining.

Pursuant to Resolution 6-831, the "University of the District of Columbia Educational Services Employees Pay Adjustment and Approval Resolution of 1986," effective October 7, 1986, the Council approved the proposed pay adjustment and compensation system changes submitted by the Board of Trustees of the University of the District of Columbia adopted by the Board on August 26, 1986, for Educational Service employees not covered by collective bargaining.

Pay adjustment and compensation system changes for Educational Service employees of Board of Education approved. — Pursuant to Resolution 6-838, the "District of Columbia Board of Education Educational Service Employees Pay Adjustment Approval Resolution of 1986," effective October 7, 1986,

the Council approved the proposed pay adjustment and compensation system changes submitted by the District of Columbia Board of Education Adopted by the Board on September 17, 1986, for Educational Service employees not covered by collective bargaining.

Compensation system changes for Educational Service Employees approved. — Pursuant to Resolution 7-336, the "Board of Education Educational Service Employees Fiscal Year 1988 Compensation System Changes Approval Resolution of 1988", effective November 15, 1988, the Council approved the proposed compensation system changes recommended by the Board of Education for Educational Service employees not covered by collective bargaining transmitted to Council by the President of the Board on October 31, 1988 following their adoption by the Board at a meeting on October 27, 1988.

Pursuant to Resolution 8-188, the "D.C. Bd. of Education Educational Service Employee Fiscal Year 1990 Compensation System Changes Approval Resolution of 1990", effective January 26, 1990, the Council approved proposed compensation system changes submitted by the Board of Education for educational service employees not covered by collective bargaining for the fiscal year ending September 30, 1990.

Compensation system changes for Educational Service Employees disapproved. — Pursuant to Resolution 7-366, the "Board of Education Educational Service Employees Fiscal Year 1989 Compensation System Changes Disapproval and Suggested Revisions Resolution of 1988", effective November 29, 1988, the Council disapproved the proposed compensation system changes recommended by the Board of Education for Educational Service employees not covered by collective bargaining, transmitted to Council by the Board on September 30, 1988.

Fiscal Year 1989 compensation system changes for Educational Service employees not covered by collective bargaining approved. — Pursuant to Resolution 8-10, the "Board of Education Educational Service Employees Fiscal Year 1989 Compensation System Changes Approval Resolution of 1989", effective January 31, 1989, the Council approved the proposed Fiscal Year 1989 compensation system changes submitted by the Board of Education for Educational Service employees not covered by collective bargaining.

Grievance procedure. — Where an employee fails to file a grievance regarding the classification of his position, but instead files an action in the courts, the action will be dismissed for failure to exhaust all administrative remedies. *Gilmore v. Board of Trustees*, App. D.C., 695 A.2d 1164 (1997).

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); Wilson v. Dixon, 120 WLR 33 (Super. Ct. 1992).

§ 1-612.12. Compensation for members of the Public Employee Relations Board.

(a) Notwithstanding any other provision of this subchapter, members of the Public Employee Relations Board shall receive compensation at the rate of \$250 per day, or \$31.25 per hour, whichever is less, while in the service of the said Board. Should a member serve in excess of 8 hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of 2 per diem payments for any consecutive 24-hour period.

(b) During the transition period a person serving on both the Board of Labor Relations and the Public Employee Relations Board shall receive compensation as provided in subsection (a) of this section.

(c) Adjustments to the rate of compensation provided in this section shall be made in accordance with § 1-612.8(b). (1973 Ed., § 1-341.12; Mar. 3, 1979, D.C. Law 2-139, § 1112, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(m), (n), 27 DCR 2632.)

Section references. — This section is referred to in § 1-605.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-612.13. Pay setting for fire fighters, police officers and teachers for the fiscal year ending September 30, 1979, and September 30, 1980.

(a)(1) The Mayor of the District of Columbia shall ascertain the average percentage increase to be used by the President of the United States in adjusting rates of pay (to be effective October 1, 1978, and October 1, 1979, respectively) under § 5305(a)(2) of Title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under § 5305(c) of Title 5 of the United States Code, and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in § 4-406(a) and in § 31-1101, on the 1st pay period after October 1, 1978, and October 1, 1979, respectively, to reflect the average percentage increase given to General Schedule employees. If the alternative plan of the President of the United States becomes effective as provided in § 5305 of Title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under such alternative plan. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average

percentage increase of the Presidential adjustments of rates of pay under 5 U.S.C. § 5305(m).

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under this section shall be effective on and payable for the 1st day of the 1st pay period beginning on or after October 1, 1978, and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay, which become effective under this section, shall be the rates of pay for each class and service step concerned, as if those rates had been set by statute, and shall remain in effect until amended by the Council of the District of Columbia.

(c) The rates of pay established under this section shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this section.

(d) The rates of pay that take effect under this section shall be published in the District of Columbia Register.

(e)(1) Retroactive compensation or salary shall be paid by reason of the amendments made by this chapter only in the case of an individual in the service of the District of Columbia government, the Board of Education of the District of Columbia, or of the United States (including service in the armed forces of the United States) on the effective date of this section: Except, that such retroactive compensation or salary shall be paid:

(A) To any employee covered by this section who retired during the period beginning on the 1st day of the 1st pay period which began on or after October 1, 1978, and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter for services rendered during such period; and

(B) In accordance with the provisions of subchapter VIII of Chapter 55 of Title 5 of the United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the 1st pay period which began on or after October 1, 1978, or October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter by any such employee who dies during such period.

(2) For the purpose of this subsection, service in the armed forces of the United States in the case of an individual relieved from training and service in the armed forces of the United States, or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

(3) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of Chapter 87 of Title 5 of the United States Code (relating to government employees' group life insurance), all changes in rates of compensation or salary which result from the enactment of this chapter shall be held and considered to be effective as of the effective date of this chapter.

(f) The process, as set forth in subsection (a) of this section, whereby the salaries of the District of Columbia police, fire fighters, and teachers are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1978, and ending on September 30, 1980. (1973 Ed., § 1-341.14; Mar. 3, 1979, D.C. Law 2-139, § 1114, 25 DCR 5740; Apr. 30, 1988, D.C. Law 7-104, § 36(b), 35 DCR 147.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-104. — See note to § 1-604.8.

References in text. — The references to 5 U.S.C. § 5305 in (a)(1) and (a)(2) are to a former § 5305 which was omitted in a general revision by the Act of Nov. 5, 1990, P.L. 101-509, Title V, § 529, 104 Stat. 1429.

Section 31-1101, referenced in subsection (a)(2), was repealed by § 11 of D.C. Law 4-78, effective March 16, 1982.

§ 1-612.14. Classification policy; grade levels; publication required; public hearing.

(a) For the period beginning October 1, 1980, and ending on the last day of the pay period that contains September 30, 1981, the basic pay for an employee in the Career or Excepted Service shall not exceed \$50,112.50 per annum.

(b) For the period beginning October 1, 1980, and ending on the last day of the pay period that contains September 30, 1981, or until an executive pay plan is established by the Council pursuant to § 1-612.7, the basic pay for an employee in the Executive Service shall not exceed \$50,112.50 per annum.

(c) For the period beginning October 1, 1980, and ending September 30, 1981, the basic pay for an employee of the Board of Education shall not exceed \$50,112.50 per annum: Except, that of the Superintendent of Schools, which shall not exceed \$55,400.00 per annum.

(d) For the period beginning October 1, 1980, and ending September 30, 1981, the basic pay for educational employees under the Board of Trustees of the University of the District of Columbia whose basic pay as of September 30, 1980, is \$50,112.50 per annum or above shall not be increased, nor shall the basic rate of pay of an employee whose basic pay is less than \$50,112.50 per annum be paid at a rate in excess of that amount. (Mar. 3, 1979, D.C. Law 2-139, § 1115, as added Mar. 4, 1981, D.C. Law 3-130, § 2(g), 28 DCR 277.)

Legislative history of Law 3-130. — Law 3-130 was introduced in Council and assigned Bill No. 3-377, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-339 and

transmitted to both Houses of Congress for its review.

References in text. — Section 1-612.7, referred to in (b), was repealed by D.C. Law 12-124, effective June 10, 1998. For provisions pertaining to the Executive Service pay schedule, see § 1-611.52.

§ 1-612.15. Waiver of compensation.

An individual officer or employee of the District of Columbia government entitled to compensation under this subchapter may decline to accept all or any

part of such compensation by a waiver signed and filed with the Director of Personnel. The waiver may be revoked in writing at any time. Payment of the compensation waived may not be made for the period during which the waiver was in effect. (Mar. 3, 1979, D.C. Law 2-139, § 1116, as added Mar. 4, 1981, D.C. Law 3-130, § 2(g), 28 DCR 277.)

Section references. — This section is referred to in § 47-1803.3.

Legislative history of Law 3-130. — See note to § 1-612.14.

§ 1-612.16. Pay limitations under other laws.

Notwithstanding the provisions of § 2-309, § 2-327(a), § 1-2705, or § 23-1306, or any other provision or law, no employee of the District of Columbia government shall be authorized to receive pay in excess of that provided for in this subchapter, and any such provision of law that is inconsistent with this section shall be deemed superseded to the extent of such inconsistency. (Mar. 3, 1979, D.C. Law 2-139, 25 DCR 5740; June 11, 1981, D.C. Law 4-7, § 2, 28 DCR 1672.)

Section references. — This section is referred to in § 1-1306.

Legislative history of Law 4-7. — Law 4-7 was introduced in Council and assigned Bill No. 4-38, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 10, 1981 and March 24, 1981, respectively.

Signed by the Mayor on April 9, 1981, it was assigned Act No. 4-18 and transmitted to both Houses of Congress for its review.

References in text. — Sections 2-309 and 2-327, referred to in this section, were repealed effective August 23, 1994, by D.C. Law 10-152, § 21.

§ 1-612.17. Employee deferred compensation program established.

There is established an employee deferred compensation program as provided in the Deferred Compensation Act of 1984. (Mar. 3, 1979, D.C. Law 2-139, § 1118, as added Sept. 26, 1984, D.C. Law 5-118, § 6(a), 31 DCR 4034.)

Cross references. — As to the Employee Deferred Compensation Program, see Chapter 36 of Title 47.

Legislative history of Law 5-118. — Law 5-118 was introduced in Council and assigned Bill No. 5-177, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June

26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-170 and transmitted to both Houses of Congress for its review.

References in text. — The “Deferred Compensation Act of 1984,” referred to at the end of the section, is D.C. Law 5-118.

§ 1-612.18. Housing bonus; District of Columbia employees.

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1117, as added Mar. 16, 1989, D.C. Law 7-203, § 2(e), 36 DCR 450; Aug. 17, 1991, D.C. Law 9-33, § 2, 38 DCR 4222.)

Legislative history of Law 9-19. — Law 9-19 was introduced in Council and assigned

Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4,

1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-33. — Law 9-33 was introduced in Council and assigned Bill No. 9-215, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-60 and transmitted to both Houses of Congress for its review.

§ 1-612.19. Pre-tax benefits programs.

(a)(1) The Mayor may establish certain tax-favored and pre-tax benefits programs as are allowed by the Internal Revenue Code of 1954 (26 U.S.C. § 1 *et seq.*) and the regulations and interpretations thereunder, including sections 120, 125, 127, 129, and 132 of the Internal Revenue Code.

(2) Employee contributions to benefits programs established pursuant to this chapter, including the District of Columbia Employees Health Benefits Program, may be made on a pre-tax basis in accordance with the requirements of the Internal Revenue Code and, to the extent permitted by the Internal Revenue Code, such pre-tax contributions shall not effect a reduction of the amount of any other retirement, pension, or other benefits provided by law. To the extent permitted by the Internal Revenue Code, any amount of contributions made on a pre-tax basis shall be included in the employee's contributions to existing life insurance, retirement system, and for any other District government program keyed to the employee's scheduled rate of pay, but shall not be included for the purpose of computing federal or District income tax withholdings, including F.I.C.A., on behalf of any such employee.

(b) The Mayor may enter into an agreement with any personnel authority or independent agency to establish eligibility to participate in any benefits program established under this section.

(c) The Mayor may select one or more contractors to provide such services as may be required to implement any tax-favored program or pre-tax benefits programs in accordance with the provisions of Chapter 11A of this title.

(d) The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of this title. (Mar. 3, 1979, D.C. Law 2-139, § 1119, as added Mar. 16, 1993, D.C. Law 9-198, § 2, 39 DCR 9209.)

Legislative history of Law 9-198. — Law 9-198, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Employee Benefits Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-337, which was referred to the Committee on Government Operations. The Bill was

adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-323 and transmitted to both Houses of Congress for its review. D.C. Law 9-198 became effective on March 16, 1993.

§ 1-612.20. Mandatory direct deposit.

(a) Notwithstanding any other provision of law, the only method for the receipt of salary, wages, or any other compensation, and retirement payments by any District of Columbia employee or retiree, whether compensated by the District with District funds or federal funds, shall consist of one of the following:

(1) Direct deposit through electronic funds transfer to a checking, savings, or account designated by the employee or retiree; or

(2) The delivery of the check by U.S. mail to the employee's or retiree's place of residence.

(b) The Mayor is authorized to issue rules to implement this section. (March 3, 1979, D.C. Law 2-139, § 1120, as added Mar. 20, 1998, D.C. Law 12-60, § 601, 44 DCR 7378; Nov. 19, 1997, 111 Stat. 2185, Pub. L. 105-100, § 156.)

Effect of amendments. — D.C. Law 12-60 added this section.

Section 156 of Pub. L. 105-100 added this section.

Neither D.C. Law 12-60 nor Pub. L. 105-100 referred to the other, and effect has been given to the section as enacted by D.C. Law 12-60.

Temporary addition of section. — Section 2(a) of D.C. Law 12-47 added this section.

Section 4(b) of D.C. Law 12-47 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Comprehensive Merit Personnel Act Pilot Program Amendment Act of 1997, whichever occurs first.

Section 601 of D.C. Law 12-59 added this section.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary addition of section, see § 2(a) of the Comprehensive Merit Personnel Act Pilot Program Emergency Amendment Act of 1997 (D.C. Act 12-120, August 1, 1997, 44 DCR 4643), and see § 2(a) of the Comprehensive Merit Personnel Act Pilot Program Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-178, October 30, 1997, 44 DCR 6946).

For temporary addition of section, see § 601 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6197), and see § 601 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 12-47. — Law 12-47, the "Comprehensive Merit Personnel Act Pilot Program Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-290, which was retained by Council. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-166 and transmitted to both Houses of Congress for its review. D.C. Law 12-47 became effective on April 29, 1998.

Legislative history of Law 12-59. — See note to § 1-612.8.

Legislative history of Law 12-60. — See note to § 1-612.8.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 1-612.21. Personnel authority pilot programs.

(a) Notwithstanding any other provision of this subchapter, or any other provision of law or regulation, and consistent with § 1-242, the Mayor may implement pilot personnel programs in the areas of classification and compensation in the Department of Employment Services, the Department of Recreation and Parks and the Office of Personnel. Pilot programs may be established during any control period as defined in § 47-393, to help ensure successful implementation of the transformation of the District government workforce.

(b) The Mayor may issue rules and regulations to implement these programs. (Mar. 3, 1979, D.C. Law 2-139, § 1121, as added June 10, 1998, D.C. Law 12-124, § 101(n)(7), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(n) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XIII. Hours of Work; Legal Holidays; Leave.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-613.1. Hours of work.

(a) A basic administrative workweek of 40 hours is established for each full-time employee and the hours of work within that workweek shall be performed within a period of not more than 6 of any 7 consecutive days; except, that:

(1) The basic workweek for uniformed members of the Firefighting Division of the District of Columbia Fire Department shall not exceed 48 hours and the Division shall operate under a 2-shift system with all hours of duty of either shift being consecutive; and

(2) The basic workweek and hours of work for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards; provided, however, that the basic work scheduling for all employees in recognized collective bargaining units shall be subject to collective bargaining, and collective bargaining agreements shall take precedence over the provisions of this subchapter.

(b) Except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, tours of duty shall be established to provide, with respect to each employee in an organization, that:

(1) Assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(2) The basic 40 hour workweek is scheduled on 5 days, Monday through Friday when practicable, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday except under rules and regulations on flexible work schedules as provided in subsection (e) of this section.

(c) Special tours of duty, of not less than 40 hours, may be established to enable employees to take courses in nearby colleges, universities or other educational institutions that will equip them for more effective work in the District government. Premium pay may not be paid to an employee solely because his or her special tour of duty results in his or her working on a day or at a time of day for which premium pay is otherwise authorized.

(d) To the maximum extent practicable, time to be spent by an employee in a travel status away from his or her official duty station shall be scheduled within the regularly scheduled workweek of the employee.

(e) The Mayor shall issue rules and regulations governing hours of work. These rules and regulations shall provide for the use of flexible and compressed work schedules when the schedules are considered both practicable and feasible. The scheduled work hours of employees in a flexible work schedule program or a compressed work schedule program shall not be subject to overtime requirements.

(f) The hours which constitute a flexible work schedule or a compressed work schedule shall not be subject to the premium pay provisions of section 7 of Title 29 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 207) as amended, or any other law which relates to premium pay for overtime work.

(g) For the purposes of this section, "compressed schedule" means:

(1) In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays; and

(2) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays. (1973 Ed., § 1-342.1; Mar. 3, 1979, D.C. Law 2-139, § 1201, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(p), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(o), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(o)(1), 45 DCR 2464.)

Section references. — This section is referred to in § 31-1230.

Effect of amendments. — D.C. Law 12-124 rewrote (e); and added (f) and (g).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — Law 12-124, the "Omnibus Personnel Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both houses of Con-

gress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Applicability of § 101(o)(1) of D.C. Law 12-124. — Section 401(b) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(o)(1) of the act shall apply upon the enactment by the United States Congress of an amendment to 29 U.S.C. § 207 of the Fair Labor Standards Act to exempt the District of Columbia government from the applicability of the overtime provisions when employees are on a compressed work schedule up to 80 hours per pay period.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Issues not mandatory subjects of collective bargaining with teacher's union. —

The beginning date of the school year and Good Friday's status as a holiday are not mandatory subjects of collective bargaining between the District of Columbia Public Schools and the

Washington Teachers' Union. Public Employee Relations Bd. v. Washington Teachers' Union Local 6, App. D.C., 556 A.2d 206 (1989).

Cited in Washington Teachers' Union Local 6 v. District of Columbia, 115 WLR 1057 (Super. Ct.).

§ 1-613.2. Legal holidays.

(a) Legal public holidays are as follows:

- (1) New Year's Day, January 1st of each year;
- (2) Dr. Martin Luther King, Jr.'s Birthday, the 3rd Monday in January of each year;
- (3) Washington's Birthday, the 3rd Monday in February of each year;
- (4) Memorial Day, the last Monday in May of each year;
- (5) Independence Day, July 4th of each year;
- (6) Labor Day, the 1st Monday in September of each year;
- (7) Columbus Day, the 2nd Monday in October of each year;
- (8) Veterans Day, November 11th of each year;
- (9) Thanksgiving Day, the 4th Thursday in November of each year; and
- (10) Christmas Day, December 25th of each year.

(b) For purposes of pay and leave with respect to a legal public holiday listed in subsection (a) of this section and any other day designated to be a legal holiday by the Mayor, the following rules and regulations shall apply:

(1) For full-time employees whose basic workweek is Monday through Friday, if a legal holiday occurs on Saturday, the Friday immediately before is a legal public holiday and if a legal holiday occurs on Sunday, the Monday immediately following is a legal public holiday;

(2) For full-time employees whose basic workweek is other than Monday through Friday, except the regular weekly nonworkday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee; and

(3) For part-time employees, a legal holiday or a day designated as a holiday under paragraph (1) of this subsection which falls on the employee's regularly scheduled workday is a legal public holiday for the employee.

(c) January 20th of each 4th year starting in 1981, Inauguration Day, is a legal public holiday for the purpose of pay and leave of employees scheduled to work on that day. When January 20th of any 4th year falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purposes of this section.

(d) When an employee, having a regularly scheduled tour of duty is relieved or prevented from working on a day District agencies are closed by order of the Mayor, he or she is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

(e) The Mayor shall prescribe rules and regulations governing the pay and leave of employees in connection with legal public holidays and other designated nonworkdays.

(f) The Board of Trustees of the University of the District of Columbia shall have authority to establish not more than 3 additional holidays to honor

persons or events germane to academic interests. (1973 Ed., § 1-342.2; Mar. 3, 1979, D.C. Law 2-139, § 1202, 25 DCR 5740; Mar. 14, 1985, D.C. Law 5-155, § 2, 32 DCR 11; Feb. 24, 1987, D.C. Law 6-177, § 3(q), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(p), 43 DCR 2978.)

Section references. — This section is referred to in § 31-1230.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 5-155. — Law 5-155 was introduced in Council and assigned Bill No. 5-322, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Effective date of §§ 2 and 3 of Law 5-155. — Section 4(b) of D.C. Law 5-155 provides that §§ 2 and 3 of the act shall take effect January 1, 1986.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983).

§ 1-613.3. Leave.

(a) All employees shall be entitled to earn annual and sick leave as provided herein, except:

(1) Educational employees under the Board of Education or Board of Trustees of the University of the District of Columbia. The leave system for such employees shall be established by rules and regulations promulgated by the respective Boards;

(2) An intermittent employee who does not have a regularly scheduled tour of duty;

(3) Elected officials;

(4) Members of boards and commissions whose pay is fixed under § 1-612.8;

(5) A temporary employee appointed for less than 90 days;

(6) Employees first hired after September 30, 1987; or

(7) Employees covered under subchapter XI-A of this chapter.

(b) The days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays. The annual leave provided by this section, including annual leave that will accrue to an employee during the year, may be granted at any time during the year by the appropriate personnel authority.

(c) An employee who accepts a position excepted from these provisions under subsection (a) of this section, without a break in service, may elect either a lump-sum payment for any unused annual leave or have such leave retained for recrediting purposes if he or she returns to a position covered by these provisions.

(d) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments, or to have the excess leave

carried forward as a charge against later accruing annual leave, unless repayment is waived as provided under subchapter XXX of this chapter.

(e)(1) An employee is entitled to annual leave with pay which accrues as follows:

(A) One-half day for each full biweekly pay period for an employee with less than 3 years of federal or District government service;

(B) Three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of federal or District government service; and

(C) One day for each full biweekly pay period for an employee with 15 or more years of federal or District government service.

(2) For the purposes of this subsection, an employee is deemed employed for a full biweekly pay period if he or she is employed during the days within that period, exclusive of legal holidays and nonworkdays which fall within his or her basic administrative workweek. A part-time employee serving on a prearranged scheduled tour of duty is entitled to earn leave as provided above on a pro rata basis. Leave accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid based on biweekly pay periods. A change in the rate of accrual of annual leave by an employee under this subsection takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(f) In determining years of service for leave accrual purposes, an employee is entitled to credit for all service creditable under § 8332 of Title 5 of the United States Code for annuity purposes under Civil Service retirement. An employee who is a military retiree is entitled to credit for active military service only if his or her retirement was based on disability resulting from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war as defined by §§ 101 and 301 of Title 38 of the United States Code. The determination of years of service may be made on the basis of an affidavit of the employee.

(g) An employee whose current employment is limited to less than 90 days is entitled to annual leave only after being currently employed for a continuous period of 90 days under successive temporary appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him or her since the date of his or her initial temporary appointment.

(h) Annual leave which is not used by an employee accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the 1st full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a calendar year.

(1) Annual leave in excess of 30 days which was accumulated under an earlier statute remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the 1st full biweekly pay period, or

corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year until the employee's accumulated leave does not exceed 30 days.

(2) Annual leave which is lost due to administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the annual leave was scheduled in advance, shall be restored to the employee:

(A) Restored annual leave which is in excess of 30 days shall be credited to a separate leave account for the employee and shall be available for use by the employee for a period of 2 years. Restored leave shall be included in a lump-sum payment if unused and still available upon the separation of the employee;

(B) Annual leave otherwise accruable after June 30, 1960, which is lost because of administrative error and is not recredited because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date on which the error is discovered.

(i) When an individual who received a lump-sum payment for leave is reemployed before the end of the period covered by the lump-sum payment, except in a position excepted under subsection (a) of this section, he or she shall refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

(j) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period: Except, that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department on the basis of two-fifths of a day for each full biweekly pay period. Sick leave may not be charged to the account of a uniformed member of the Metropolitan Police Department or the Fire Department for an absence due to injury or illness resulting from the performance of duty.

(k) The annual and sick leave to the credit of a federal employee who transfers to the District government without a break in service will be transferred to the credit of the employee under the District government leave system. The annual and sick leave to the credit of an employee who transfers from a position under a different leave system(s) without a break in service shall be transferred on an adjusted basis under rules and regulations prescribed by the Mayor.

(l) An employee is entitled to leave, without loss of pay, leave, or credit for time of service, during a period of absence in which he or she is summoned, in connection with a judicial proceeding, by a court or other authority responsible for the conduct of that proceeding to serve as a juror or as a witness on behalf of any party in connection with judicial proceeding to which the United States, the District of Columbia, or a state or local government is a party.

(m) An employee is entitled to leave without loss in pay, leave, or service for each day, not in excess of 15 days in a calendar year, in which he or she is on active duty or is engaged in field or coast defense training under §§ 502

through 505 of Title 32 of the United States Code as a reserve member of the armed forces or member of the National Guard. An employee who is a member of a reserve component of the armed forces, as described in § 261 of Title 10 of the United States Code, or the National Guard, as described in § 101 of Title 32 of the United States Code and performs, for the purpose of providing military aid to enforce the law, the following:

(1) Federal service under § 331, 332, 333, 3500, or 8500 of Title 10 of the United States Code or other provision of law, as applicable; or

(2) Full-time military service for his or her state, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, or a territory of the United States is entitled during and because of such service to leave without loss of pay, leave, or credit for service. Leave granted by this paragraph shall not exceed 22 workdays in a calendar year. An employee who is a member of the National Guard of the District of Columbia is entitled to leave without limitation and without loss in pay or time for each day of a parade or encampment ordered or authorized under former § 39-608. This provision covers each day of service in the National Guard, or a portion thereof, an employee is ordered to perform by the Commanding General. An amount (other than travel, transportation, or per diem allowance) received by an employee for military service as a member of the reserve or National Guard for a period for which he or she is entitled to military leave shall be credited against the pay due the employee for the same period.

(n) An employee is entitled to not more than 3 days of leave without loss of or reduction in pay, leave or service to make arrangements for or attend the funeral or memorial service for an immediate relative who died as a result of wound, disease or injury incurred while serving as a member of the armed forces in a combat zone.

(o) The Mayor is authorized to issue necessary rules and regulations to implement the provisions of this section.

(p) In units where exclusive recognition has been granted, the Mayor or an appropriate personnel authority may enter into agreements with the exclusive bargaining agent to continue employee coverage under the provisions of this chapter while an employee(s) serves in a full-time or regular part-time capacity with a labor organization at no loss in benefits to the individual employee(s): Provided, however, that the cost to the District shall be paid by the labor organization while the employee(s) is so engaged, and: Provided, further, that this provision shall not limit the negotiability or use of official time by unit employees for the purposes of investigation, processing, and resolving grievances, complaints or any and all other similar disputes.

(q) After advising his or her supervisor, an employee is entitled to utilize up to 10 hours of administrative leave for the purpose of responding to adverse actions initiated under the provisions of subchapter XVII of this chapter.

(r) An employee who is a member of the District of Columbia Retirement Board shall be entitled to administrative leave, in accordance with § 1-711(c), while engaged in the actual performance of duties vested in the Board during the employee's regularly scheduled working hours. (1973 Ed., § 1-342.3; Mar. 3, 1979, D.C. Law 2-139, § 1203, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81,

§ 2(o), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(r), 33 DCR 7241; Mar. 24, 1990, D.C. Law 8-97, § 3(c), 37 DCR 1046; Aug. 1, 1996, D.C. Law 11-152, § 302(q), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(o)(2), 45 DCR 2464.)

Section references. — This section is referred to in §§ 31-1230 and 36-1405.

Effect of amendments. — D.C. Law 12-124, deleted “or” from the end of (a)(4); in (a)(5), deleted “Provided, however, that leave for all employees included within recognized collective bargaining units shall be subject to collective bargaining and collective bargaining agreements shall take precedence over the provisions of this subchapter” from the end; and added (a)(6) and (a)(7).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990,

provided that § 4(b) of D.C. Law 6-177 is repealed.

References in text. — Section 39-608, referred to in the third sentence of (m)(2) of this section, was repealed by the Act of September 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and by the Act of October 22, 1968, 82 Stat. 1315, Pub. L. 90-623, § 7(a)(1).

10 U.S.C. §§ 3500 and 8500 were repealed by Pub. L. 103-337, Div. A, Title XVI, § 1662(f)(2), effective Oct. 5, 1994.

Applicability of § 101(o)(2) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Administrative sick leave. — A career police officer does not have a property right in administrative sick leave when that officer has failed to demonstrate that he has satisfied the statutory conditions of the leave. *Hairston v. District of Columbia*, 638 F. Supp. 198 (D.D.C. 1986).

A decision of the Metropolitan Police Department denying administrative sick leave is a grievance and as such, it must be appealed to the Office of Employee Appeals prior to judicial review. *District of Columbia v. Daniels*, App. D.C., 523 A.2d 569 (1987).

Cited in *District of Columbia v. Jones*, App. D.C., 442 A.2d 512 (1982); *American Fed’n of Gov’t Employees v. Barry*, App. D.C., 459 A.2d 1045 (1983); *Allen v. District of Columbia Police & Firefighters’ Retirement & Relief Bd.*, App. D.C., 528 A.2d 1225 (1987).

§ 1-613.3a. Universal leave program.

(a) The Mayor shall develop a universal leave system for Career and Excepted Service employees who were first employed by the District of Columbia government on or after October 1, 1987, excluding police officers, firefighters, and employees excluded from earning leave pursuant to § 1-613.3(a)(1) through (a)(5). The universal leave system shall include disability income protection for non work-related illness and injury.

(b) Within 90 days of the effective date of this section, the Mayor shall submit the universal leave system to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed universal leave system by resolution within the 60-day review period, the proposed universal leave system shall be deemed approved.

- (c) The submission to the Council shall at a minimum include the following:
- (1) The rate at which universal leave shall be accrued;
 - (2) The number of universal leave days that may be carried forward from one leave year to the next;
 - (3) A provision for employees who are denied the opportunity to use their universal leave;
 - (4) The percentage of income to be received under any disability insurance program and its tax status;
 - (5) The definition of “disability” and a method for dispute resolution;
 - (6) The stipulated waiting period before disability insurance income would commence;
 - (7) The period of disability income protection;
 - (8) Transition provisions;
 - (9) The effective date of the universal leave system; and
 - (10) Fiscal impact. (Mar. 3, 1979, D.C. Law 2-139, § 1203a, as added June 10, 1998, D.C. Law 12-124, § 101(o)(3), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(o)(3) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

§ 1-613.4. Definitions.

For purposes of §§ 1-613.4 through 1-613.10, the term:

- (1) “Agency” shall have the meaning provided in § 1-603.1(1).
- (2) “Employee” shall have the meaning provided in § 1-603.1(7), except that it shall mean only an employee who is eligible to accrue annual leave.
- (3) “Leave donor” means an employee who donates annual leave to the annual leave bank created in accordance with § 1-613.5.
- (4) “Leave recipient” means an employee whose personnel authority has approved the employee’s application to receive annual leave from the annual leave bank.
- (5) “Medical emergency” means a medical condition of an employee or a member of an employee’s family that is likely to require the employee’s absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.
- (6) “Personnel authority” shall have the meaning provided in § 1-603.1(14). (Mar. 3, 1979, D.C. Law 2-139, § 1204, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in § 1-613.11.

Legislative history of Law 8-155. — Law 8-155 was introduced in Council and assigned

Bill No. 8-109, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively.

Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-217 and transmitted to both Houses of Congress for its review.

§ 1-613.5. Annual leave bank.

(a) There is established within the District of Columbia ("District") government an annual leave bank. An employee may donate annual leave to the bank and withdraw annual leave from the bank in accordance with §§ 1-613.6, 1-613.7, and 1-613.8 and under guidelines promulgated by the Mayor pursuant to § 1-613.11.

(b) The Mayor shall maintain an overall accounting of deposits and withdrawals to and from the annual leave bank.

(c) Each personnel authority shall keep an accounting of the amount and value of employee donations to and withdrawals from the bank. The accounting shall be provided to the Mayor on a quarterly basis.

(d) A personnel authority may enter into an agreement with another personnel authority to establish an annual leave bank program or to join an already existing annual leave bank program. The personnel authorities shall provide a copy of the written agreement to the Mayor and the Director of Personnel within 10 days of the agreement. (Mar. 3, 1979, D.C. Law 2-139, § 1205, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159; June 10, 1998, D.C. Law 12-124, § 101(o)(4), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-613.4 and 1-613.11.

Effect of amendments. — D.C. Law 12-124 added (d).

Legislative history of Law 8-155. — See note to § 1-613.4.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(o)(4) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-613.6. Donations.

(a) A potential leave donor may submit a voluntary written request to the potential leave donor's personnel authority that a specified number of hours of the employee's accrued annual leave be donated to the annual leave bank. The donation shall be made to the annual leave bank in accordance with procedures established pursuant to § 1-613.11.

(b) A leave donor may not donate more than a total of one-half of the amount of annual leave that the leave donor would be entitled to accrue during the leave year in which the donation is made, except that a leave donor may donate restored leave without limitation; however, the personnel authority or his or her designee may, in special circumstances, waive the limitation of the amount of annual leave that can be donated by an employee once the employee has donated the minimum of 4 hours of leave.

(b-1) A leave donor may designate the employee who is to receive the donated leave if the employee has applied for and been approved as a leave recipient. Any remaining donated annual leave, if not used by the designated

leave recipient, becomes the property of the annual leave bank program for use by other leave recipients.

(c) The value of the leave donated by the leave donor shall be in an amount equal to the hourly rate of pay of the leave donor multiplied by the number of hours of annual leave donated. (Mar. 3, 1979, D.C. Law 2-139, § 1206, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159; June 10, 1998, D.C. Law 12-124, § 101(o)(5), 45 DCR 2464.)

Section references. — This section is referred to §§ 1-613.4, 1-613.5, and 1-613.11.

Effect of amendments. — D.C. Law 12-124 added “however, the personnel authority or his or her designee may, in special circumstances, waive the limitation of the amount of annual leave that can be donated by an employee once the employee has donated the minimum of 4 hours of leave” in (b); and added (b-1).

Legislative history of Law 8-155. — See note to § 1-613.4.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(o)(5) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-613.7. Application for withdrawal.

An application for withdrawal shall proceed as follows:

(1) An employee who has been affected by a medical emergency may make written application to the employee’s personnel authority to become a leave recipient;

(2) If the employee is not capable of making application on the employee’s own behalf, another employee of the personnel authority may make written application on the employee’s behalf; and

(3) The application shall be notarized by the affected employee or the employee acting on the affected employee’s behalf. (Mar. 3, 1979, D.C. Law 2-139, § 1207, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-613.4, 1-613.5, and 1-613.11.

Legislative history of Law 8-155. — See note to § 1-613.4.

§ 1-613.8. Approval of application for withdrawal.

(a) The potential leave recipient’s personnel authority shall review an application to become a leave recipient under procedures established by the Mayor pursuant to § 1-613.11.

(b) Before approving an application to become a leave recipient, the personnel authority shall determine that:

(1) The request to become a leave recipient has been necessitated by a medical emergency;

(2) The absence from duty because of the medical emergency is, or is expected to be, at least 10 workdays;

(3) The potential leave recipient has previously donated a minimum of 4 hours of annual leave to the annual leave bank in the leave year in which the employee submits the application to become a leave recipient; and

(4) The potential leave recipient does not possess accrued paid leave sufficient to cover the expected period of absence from work.

(c) The value of the annual leave received by the leave recipient shall be in an amount equal to the hourly rate of pay of the leave recipient multiplied by the number of hours of annual leave received. (Mar. 3, 1979, D.C. Law 2-139, § 1208, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-613.4, 1-613.5, and 1-613.11.

Legislative history of Law 8-155. — See note to § 1-613.4.

§ 1-613.9. Use of donated annual leave.

A leave recipient may use annual leave received from the leave bank in the same manner and for the same purposes as if the leave recipient had accrued the leave, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient, or any advanced sick leave or compensatory time shall be used before any leave from the leave bank shall be used. (Mar. 3, 1979, D.C. Law 2-139, § 1209, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-613.4 and 1-613.11.

Legislative history of Law 8-155. — See note to § 1-613.4.

§ 1-613.10. Termination of medical emergency.

The medical emergency affecting a leave recipient shall terminate when:

- (1) The leave recipient's employment terminates; or
 - (2) The leave recipient is no longer affected by the medical emergency.
- (Mar. 3, 1979, D.C. Law 2-139, § 1210, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-613.4 and 1-613.11.

Legislative history of Law 8-155. — See note to § 1-613.4.

§ 1-613.11. Rules.

The Mayor shall issue proposed rules to implement the provisions of §§ 1-613.4 through 1-613.10. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 3, 1979, D.C. Law 2-139, § 1211, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-613.5, 1-613.6, and 1-613.8.

Legislative history of Law 8-155. — See note to § 1-613.4.

Subchapter XIV. Employee Development.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.

§ 1-614.1. Programs for employee development.

(a) The Mayor and the District of Columbia Board of Education shall each install and maintain programs for the training and development of their respective employees through planned courses, systems, or other instruction or education in fields which are or will be related to the performance of official duties for the District, in order to increase their knowledge, proficiency, ability, skill and qualifications in the performance of these duties. This system of training shall be created to ensure that the principles of efficiency, economy and equitable treatment for all employees is carried out for the successful operation of the District government.

(b) When educational facilities under the control and direction of the District government are not the most economical available to carry out the provisions of this section, the Mayor and the District of Columbia Board of Education may make arrangements and agreements with colleges, universities, educational institutions, appropriate institutions or corporations. The appropriate personnel authority shall have the authority to enter into these arrangements and agreements for employee development. The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning what items must be included in agreements for employee development activities relying on non-District facilities.

(c)(1) An employee shall not suffer a loss in pay, tenure, or other rights and benefits by reason of participation in any training or career development program when such participation has been approved or authorized by the District government.

(2) The District may: (A) Pay all or a part of the pay of an employee selected and assigned for training under this section (except overtime, holiday, night, or Sunday premium pay); and (B) pay all or a part of the necessary expenses of the training, including the employee's costs of travel, subsistence, transportation, tuition, fees, books, and related materials; and membership fees to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent for the training. The prohibition in this subsection on payment of premium pay may be waived when the Mayor determines that payment of premium pay would be in the interests of equity and good conscience or in the public interest.

(d)(1) An employee selected for training under this section in a university, college, or other educational institution not controlled by the District shall agree in writing with the District that he or she will:

(A) Continue in the service of the District after the end of the training period for a period of time at least equal to the length of the training period, unless he or she is involuntarily separated from that service; and

(B) Pay to the District the amount of expenses incurred by it in connection with the training, other than his or her pay, if he or she voluntarily leaves that service before the end of the period for which he or she had agreed to serve.

(2) If an employee fails to fulfill the agreement under this subsection to pay the expenses of the training, a sum equal to those expenses is recoverable

by the District from the employee, or his or her estate, by setoff against pay, amount of retirement credit, or other amount due the employee from the District.

(3) The right of recovery under paragraph (2) of this subsection may be waived, in whole or in part, by the Mayor and the District of Columbia Board of Education if recovery would be against equity and good conscience, or against the public interest.

(4) The Mayor and the District of Columbia Board of Education may exempt from the requirement for entering into a written agreement under this subsection the following:

(A) An employee selected for training that does not exceed 80 hours within a single program;

(B) An employee selected for training which is given through a correspondence course; and

(C) An employee selected for training in a manufacturer's training facility, if that training is the direct result of the lease or purchase of that manufacturer's product by the District government.

(e) The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning the implementation of this subchapter, consistent with equal employment opportunities and standards.

(f) The head of each District agency shall prepare an annual employee development plan which identifies subject matter areas where training is needed, the types of programs and courses which could be used to meet those identified training needs and the types of training activities which will be carried out in the coming year.

(1) The annual employee development plan should also evaluate the impact and success of prior training and employee development activities. Cost figures should include employee pay and benefit expenses while engaged in training on official time, tuition expenses and other fees, travel costs, and other appropriate items.

(2) The Council may review and inspect all plans developed in accordance with this subsection.

(g) Programs developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations. (1973 Ed., § 1-343.1; Mar. 3, 1979, D.C. Law 2-139, § 1301, 25 DCR 5740.)

Emergency act amendments. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act

of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter XIV-A. Performance Management.

§ 1-614.51. Performance management system established.

There is established a comprehensive performance management system designed to:

(1) Inform employees of work expectations;

(2) Hold employees accountable for their performance, which shall include the requirement that an employee receive a rating of either “achieved expectations” or “exceeded expectations” pursuant to § 1-614.52 for the rating period immediately prior to the due date for a periodic step increase to be able to receive that step increase, and that each failure to achieve the required rating shall result in the due date for the step increase being delayed for an additional year;

(3) Objectively evaluate employees’ work performance based on criteria that have been made known to the employees;

(4) Improve employee performance through training;

(5) Recognize employee accomplishment; and

(6) Include customer satisfaction as an evaluation factor. (Mar. 3, 1979, D.C. Law 2-139, § 1351, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(p) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

“Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that

“Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

§ 1-614.52. Performance management system.

The performance management system shall provide for:

(1) The development of individual performance plans for all employees;

(2) Ratings based on one or more of the following performance management components:

(A) Standards;

(B) Objectives;

(C) Real-time tasks and assignments; and

(D) Competencies;

(3) Rating levels of:

(A) Exceeds expectations (outstanding);

(B) Achieved expectations;

(C) Below expectations; and

(D) Failed expectations (unacceptable);

(4) A rating process, with (at a minimum) annual evaluations which may include input from citizens, customers, peers, the employee, subordinates, and supervisors;

(5) A removal and reconsideration process, which may include the alternatives of reassignment and demotion; and

(6) An opportunity to demonstrate an improvement in performance during the reconsideration process. (Mar. 3, 1979, D.C. Law 2-139, § 1352, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(p) of D.C. Law 12-124. — See note to § 1-614.51.

§ 1-614.53. Transition provisions.

(a) Until regulations are issued by the Mayor, the Board of Education and the Board of Trustees of the University of the District of Columbia to implement the provisions of this subchapter for their respective employees, the performance evaluation systems in effect on June 10, 1998, shall continue in effect.

(b) Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining. (Mar. 3, 1979, D.C. Law 2-139, § 1353, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(p) of D.C. Law 12-124. — See note to § 1-614.51.

Subchapter XV. Performance Evaluation.

§ 1-615.1. Performance-rating plans — Established.

Repealed.

(1973 Ed., § 1-344.1; Mar. 3, 1979, D.C. Law 2-139, § 1401, 25 DCR 5740; Sept. 18, 1981, D.C. Law 4-30, § 2, 28 DCR 3118; Feb. 24, 1987, D.C. Law 6-177, § 3(s), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(r), 43 DCR 2978; Mar. 24, 1998, D.C. Law 12-81, § 2(b), 45 DCR 745; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(q) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as

amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-615.2. Same — Content requirements.

Repealed.

(1973 Ed., § 1-344.2; Mar. 3, 1979, D.C. Law 2-139, § 1402, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(q) of D.C. Law 12-124. — See note to § 1-615.1.

§ 1-615.3. Same — Ratings.

Repealed.

(1973 Ed., § 1-344.3; Mar. 3, 1979, D.C. Law 2-139, § 1403, 25 DCR 5740; June 10, 1998, D.C. Law 12-154, § 101(q), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(q) of D.C. Law 12-124. — See note to § 1-615.1.

§ 1-615.4. Same — Review of Ratings.

Repealed.

(1973 Ed., § 1-344.4; Mar. 3, 1979, D.C. Law 2-139, § 1404, 25 DCR 5740; Mar. 5, 1981, D.C. Law 3-158, § 10(i), 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(q) of D.C. Law 12-124. — See note to § 1-615.1.

§ 1-615.5. Same — Other rating procedures prohibited; exception.

Repealed.

(1973 Ed., § 1-344.5; Mar. 3, 1979, D.C. Law 2-139, § 1405, 25 DCR 5740; May 16, 1995, D.C. Law 11-16, § 2(a), 42 DCR 1394; June 10, 1998, D.C. Law 12-154, § 101(q), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(q) of D.C. Law 12-124. — See note to § 1-615.1.

Subchapter XV-A. Managers Accountability.

§ 1-615.11. Definitions.

For the purposes of this subchapter, the term:

(1) “Agency” means any office, department, division, board, commission, or other agency of the District government, including both subordinate agency and independent agency, required by law or by the Mayor or Council to administer any law or any rule adopted under the authority of a law. The term “agency” does not include the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Performance measures" means the methods of gauging the outcomes and outputs of publicly funded activities through procedures and devices, including, but not limited to, existing agency records, citizen surveys, and trained observer ratings.

(3) "Performance plan" means the strategic description of how an agency's mission and goals will be accomplished and shall consist of functions, activities, operations, and projects and both qualitative and quantitative measures required for effective implementation. The performance plan shall also include the following:

(A) Mission statement: A statement of central purpose of the organizational entity;

(B) Objectives: Broad statements of the desired benefits from the performance of the central purpose; and

(C) Goals: Target levels of performance expressed as a tangible, measureable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate.

(4) "Performance report" means the annual device by which District agencies report to the Council on the progress of management employees and other personnel toward achieving the objectives and goals in the performance plan.

(5) "Management employee" means any person whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall goals and objectives.

(6) "Nonmanagement personnel" means any person whose functions do not include responsibility for project management or supervision of staff, and are subject to the control and supervision by management employees.

(7) "Significant activities" means activities that are central to the functions, goals, and services of the agency, program, or project.

(8) "Publicly funded" or "public funds" means support by any governmental source. (Mar. 3, 1979, D.C. Law 2-139, § 1411, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394.)

Section references. — This section is referred to in § 1-610.52.

Legislative history of Law 11-16. — Law 11-16, the "Government Managers Accountability Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-18, which was retained by council. The Bill was adopted on

first and second readings on January 17, 1995, and February 7, 1995, respectively. Approved without the signature of the Mayor on March 10, 1995, it was assigned Act No. 11-28 and transmitted to both Houses of Congress for its review. D.C. Law 11-16 became effective on May 16, 1995.

§ 1-615.12. Performance plan.

(a) Not later than January 1, 1996, and coincident with annual budget submissions to the Council in succeeding years, each agency of the District of Columbia shall develop and submit to the Council a performance plan that covers all publicly funded activities of the agency.

(b) The performance plan shall state measurable, objective performance goals and objectives for all significant activities of the government of the District of Columbia, including activities supported in whole or in part by public funds, but performed in whole or in part by some other public or private entity.

(c) Control center and responsibility center budgetary information shall be organized along specific program lines with corresponding statements of goals and objectives included in the performance plan.

(d) For each agency and major program covered by the performance plan, there shall be one or more measures of performance, that addresses both quantity and quality. The performance measures may include program outputs and activity levels, but should also include measures of program outcomes and results.

(e) For each measure of performance there shall be at least 2 stated objectives, one designated as an acceptable level of performance and the other designated as a superior level of performance. The performance plan shall also state the position, and immediate supervisor or superior of the District of Columbia management employee, and the identity of nonmanagement personnel who are most directly responsible for the achievement of each performance measure.

(f) Any change in resources or reprogramming within the agency shall require appropriate revision to the performance plan by the agency. (Mar. 3, 1979, D.C. Law 2-139, § 1412, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394.)

Legislative history of Law 11-16. — See note to § 1-615.11.

Government Managers Accountability Act of 1995 — FY 96 Performance Report

and FY 98 Performance Plan. — See Mayor's Order 97-8, January 14, 1997 (44 DCR 490).

§ 1-615.13. Performance report.

(a) Not later than January 1, 1997, and coincident with annual agency budget submissions in subsequent years, each agency of the District of Columbia government shall develop and submit to the Council of the District of Columbia a performance report covering all major programs of the agency.

(b) The performance report shall, for each performance measure stated in the previous fiscal year's performance plan, indicate the actual level of performance achieved as compared to the stated goal or objective for an acceptable level of performance and the goal or objective for a superior level of performance. The performance report shall also state the position and the immediate supervisor or superior of the District of Columbia management employee most directly responsible for the achievement of each performance measure, as well as the names of the nonmanagement personnel responsible for the accomplishment of the performance measure under management's supervision. (Mar. 3, 1979, D.C. Law 2-139, § 1413, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394.)

Legislative history of Law 11-16. — See note to § 1-615.11.

§ 1-615.14. Development of plans and reports.

(a) Agencies of the District of Columbia shall develop the performance plans and performance reports that are submitted by January 1, 1996, January 1, 1997, and succeeding years in consultation with the Office of the District of Columbia Auditor.

(b) The Mayor shall order that the District of Columbia Office of Personnel amend its management and personnel laws and regulations to be in conformity with the provisions of this subchapter.

(c) The Office of the District of Columbia Auditor shall conduct an audit of the performance reports of the District of Columbia that are submitted in 1997 and 1998.

(d) The District may invite outside review of the process and the indicators upon the submission of the first performance plan and performance report to obtain recommendations concerning the process and the indicators, and after the initial review, on a biannual basis. (Mar. 3, 1979, D.C. Law 2-139, § 1414, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394.)

Legislative history of Law 11-16. — See note to § 1-615.11.

Subchapter XVI. Employee Rights and Responsibilities.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-616.1. Declaration of purpose.

Repealed.

(1973 Ed., § 1-345.1; Mar. 3, 1979, D.C. Law 2-139, § 1501, 25 DCR 5740; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Emergency act amendments. — For temporary repeal of §§ 1-616.1 through 1-616.3, see § 102(b) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and § 102(b) of the Whistleblower Reinforcement

Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Legislative history of Law 12-160. — See note to § 1-602.1.

§ 1-616.2. Employee bill of rights.

Repealed.

(1973 Ed., § 1-345.2; Mar. 3, 1979, D.C. Law 2-139, § 1502, 25 DCR 5740; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Emergency act amendments. — See note to § 1-616.1.

Legislative history of Law 12-160. — See note to § 1-602.1.

§ 1-616.3. Complaints of criminal harassment for appearances and testimony before the Council.

Repealed.

(1973 Ed., § 1-345.3; Mar. 3, 1979, D.C. Law 2-139, § 1503, 25 DCR 5740; Sept. 26, 1990, D.C. Law 8-169, § 2(a), 37 DCR 4835; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Emergency act amendments. — See note to § 1-616.1

Legislative history of Law 12-160. — See note to § 1-602.1.

§ 1-616.4. Public employees as fiduciaries for consumer protection.

(a) For purposes of this section, “consumer protection law” shall include any law intended to protect, or which does in fact protect, individual consumers from unfair, deceptive, or misleading acts or practices; or the nondisclosure of product quality, weight, size, or performance. Any employee who administers, enforces, or implements any health, safety, environmental, or consumer protection law, or any rules and regulations promulgated for the enforcement of such laws, is a fiduciary to any individual or class of individuals intended to be protected, or who are in fact protected, from injury or harm, or risk of injury or harm, by laws, rules and regulations, and, as a fiduciary, is obligated to protect such individual or class of individuals.

(b) Any individual or class of individuals may commence a civil action on his or her or their own behalf against any employee or employees in any agency for breach of a fiduciary duty upon showing that said employee or employees by his or her or their acts or omissions has or have exposed said individual or class of individuals to an injury or harm, or risk of injury or harm, from which they are to be protected by the employee or employees. Such action may be brought in the Superior Court of the District of Columbia. The District of Columbia, through the Corporation Counsel, shall defend any employee or employees against whom such action is commenced. Such employee or employees may, however, at his or her or their option, provide for his or her or their own defense.

(c) If the Court finds that any employee or employees have breached their fiduciary duty by any act or omission or by any series of acts or omissions, the Court shall do the following:

- (1) Order performance or cessation of performance, as appropriate; and
- (2) Take any other appropriate action, including the assessment of fines not to exceed \$1,000, against any employee or employees within the agency who has or have breached the duties of the fiduciary relationship. (1973 Ed., § 1-345.4; Mar. 3, 1979, D.C. Law 2-139, § 1504, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-616.5. Curbing fraud and conflicts of interest.

(a)(1) Any citizen shall have a right to commence a suit in the Superior Court of the District of Columbia on behalf of the District government to recover funds which have been improperly paid by the District government while there exists any conflict of interest on the part of the employee or employees directly or indirectly responsible for such payment.

(2) It shall be an affirmative defense to any action under this section that the defendant did not know or have reason to know of the conflict of interest.

(b) Any citizen who commences a suit under this section shall be entitled to 10 percent of the amount recovered for the District. The prevailing party shall recover reasonable attorney's fees and other costs incidental to the action.

(c) The right of a citizen to commence and maintain a suit under this section shall continue notwithstanding any action taken by the Corporation Counsel or any United States attorney: Provided, however, that if the District shall first commence suit, a citizen may not commence a suit under this section: Provided, further, however, that if the District shall fail to carry on such suit with due diligence within a period of 6 months or within such additional time as the Court may allow, a citizen may commence a suit under this section and such suit shall continue notwithstanding any action taken by the Corporation Counsel or any United States attorney. (1973 Ed., § 1-345.5; Mar. 3, 1979, D.C. Law 2-139, § 1505, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter XVI-A. Whistleblower Protection for Employees of Contractors and Instrumentalities of the District Government.

§ 1-616.11. Findings and declaration of purpose.

The Council finds and declares that the public interest is served when employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal. Accordingly, the Council declares as its policy to:

(1) Enhance the rights of District employees to challenge the actions or failures of their agencies and to express their views without fear of retaliation through appropriate channels within the agency, complete and frank responses to Council inquiries, free access to law enforcement officials, oversight agencies of both the executive and legislative branches of government, and appropriate communication with the public;

(2) Ensure that acts of the Council enacted to protect individual citizens are properly enforced;

(3) Provide new rights and remedies to guarantee and ensure that public offices are truly public trusts;

(4) Hold public employees personally accountable for failure to enforce the laws and for negligence in the performance of their public duties;

(5) Ensure that rights of employees to expose corruption, dishonesty, incompetence, or administrative failure are protected;

(6) Guarantee the rights of employees to contact and communicate with the Council and be protected in that exercise;

(7) Protect employees from reprisal or retaliation for the performance of their duties; and

(8) Motivate employees to do their duties justly and efficiently. (Mar. 3, 1979, D.C. Law 2-139, § 1551, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Emergency act amendments. — For temporary addition of subchapter, see § 102(c) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July

13, 1998, 45 DCR 5158) and § 102(c) of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

§ 1-616.12. Definitions.

(a) For purposes of this subchapter, the term:

(1) “Contract” means any contract for goods or services between the District government and another entity but excludes any collective bargaining agreement.

(2) “Contributing factor” means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.

(3) “Employee” means any person who is a former or current District employee, or an applicant for employment by the District government, including but not limited to employees of subordinate agencies, independent agencies, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the District of Columbia Housing Authority, and the Metropolitan Police Department, but excluding employees of the Council of the District of Columbia.

(4) “Illegal order” means a directive to violate or to assist in violating a federal, state or local law, rule, or regulation.

(5) “Prohibited personnel action” includes but is not limited to: recommended, threatened, or actual termination, demotion, suspension, or reprimand; involuntary transfer, reassignment, or detail; referral for psychiatric or psychological counseling; failure to promote or hire or take other favorable personnel action; or retaliating in any other manner against an employee because that employee makes a protected disclosure or refuses to comply with an illegal order, as those terms are defined in this section.

(6) “Protected disclosure” means any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or a public body that the employee reasonably believes evidences:

(A) Gross mismanagement;

(B) Gross misuse or waste of public resources or funds;

(C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;

(D) A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or

(E) A substantial and specific danger to the public health and safety.

(7) “Public body” means:

(A) The United States Congress, the Council, any state legislature, the District of Columbia Office of the Inspector General, the Office of the District of Columbia Auditor, the District of Columbia Financial Responsibility and Management Assistance Authority, or any member or employee of one of these bodies;

(B) The federal, District of Columbia, or any state or local judiciary, any member or employee of these judicial branches, or any grand or petit jury;

(C) Any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality of one of these agencies or authorities;

(D) Any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(E) Any federal, District of Columbia, state, or local department of an executive branch of government; or

(F) Any division, board, bureau, office, committee, commission or independent agency of any of the public bodies described in subparagraphs (A) through (E) of this paragraph.

(8) “Supervisor” means an individual employed by the District government who meets the definition of a “supervisor” in § 1-618.1(d) or who has the authority to effectively recommend or take remedial or corrective action for the violation of a law, rule, regulation or contract term, or the misuse of government resources that an employee may allege or report pursuant to this section, including without limitation an agency head, department director, or manager.

(9) “Whistleblower” means an employee who makes or is perceived to have made a protected disclosure as that term is defined in this section. (Mar. 3, 1979, D.C. Law 2-139, § 1552, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

Legislative history of Law 12-160. — See note to § 1-602.1.

References in text. — Section 1-617.1, referred to in subsection (a)(8), was repealed by D.C. Law 12-124, § 101(r).

Editor’s notes. — This section was enacted with a subsection (a) but no subsection (b).

§ 1-616.13. Prohibitions.

A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order. (Mar. 3, 1979, D.C. Law 2-139, § 1553, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

Legislative history of Law 12-160. — See note to § 1-602.1.

§ 1-616.14. **Enforcement.**

(a) An employee aggrieved by a violation of § 1-616.13 may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including but not limited to injunction, reinstatement to the same position held before the prohibited personnel action or to an equivalent position, and reinstatement of the employee's seniority rights, restoration of lost benefits, back pay and interest on back pay, compensatory damages, and reasonable costs and attorney fees. A civil action shall be filed within one year after a violation occurs or within one year after the employee first becomes aware of the violation. A civil action brought pursuant to this section shall comply with the notice requirements of § 12-309.

(b) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 1-616.13 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the employing District agency to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

(c) Notwithstanding any other provision of law, a violation of § 1-616.13 constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.

(d) An employee who prevails in a civil action at the trial level, shall be granted the equitable relief provided in the decision effective upon the date of the decision, absent a stay. (Mar. 3, 1979, D.C. Law 2-139, § 1554, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Legislative history of Law 12-160. — See note to § 1-602.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

§ 1-616.15. **Disciplinary actions; fine.**

(a) As part of the relief ordered in an administrative, arbitration or judicial proceeding, any supervisor, including any manager, department director, or other District official, who is found to have violated § 1-616.13 shall be subject to appropriate disciplinary action including dismissal.

(b) As part of the relief ordered in a judicial proceeding, any supervisor who is found to have violated § 1-616.13 shall be subject to a civil fine not to exceed \$1000. (Mar. 3, 1979, D.C. Law 2-139, § 1555, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Legislative history of Law 12-160. — See note to § 1-602.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

§ 1-616.16. Election of remedies.

(a) The institution of a civil action pursuant to § 1-616.14 shall preclude an employee from pursuing any administrative remedy for the same cause of action from the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(b) No civil action shall be brought pursuant to § 1-616.14 if the aggrieved employee has had a final determination on the same cause of action from the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(c) Except as provided in subsections (a) and (b) of this section, nothing in this subchapter shall diminish the rights and remedies of an employee pursuant to any other federal or District law. (Mar. 3, 1979, D.C. Law 2-139, § 1556, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Legislative history of Law 12-160. — See note to § 1-602.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

§ 1-616.17. Posting of notice.

The District shall conspicuously display notices of employee protections and obligations under this subchapter in each personnel office and in other public places, and shall use all other appropriate means to keep all employees informed, including but not limited to the inclusion of annual notices of employee protections and obligations under this subchapter with employee tax reporting documents. (Mar. 3, 1979, D.C. Law 2-139, § 1557, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Legislative history of Law 12-160. — See note to § 1-602.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

§ 1-616.18. Employee responsibilities.

Employees shall have the following rights and responsibilities:

(1) The right to freely express their opinions on all public issues, including those related to the duties they are assigned to perform; provided, however, that any agency may promulgate reasonable rules and regulations requiring that any such opinions be clearly disassociated from that agency's policy;

(2) The right to disclose information unlawfully suppressed, information concerning illegal or unethical conduct which threatens or which is likely to threaten public health or safety or which involves the unlawful appropriation or use of public funds, and information which would tend to impeach the testimony of employees of the District government before committees of the Council or the responses of employees to inquiries from members of the Council concerning the implementation of programs, information which would involve

expenditure of public funds, and the protection of the constitutional rights of citizens and the rights of government employees under this act and under any other laws, rules, or regulations for the protection of the rights of employees; provided, however, that nothing in this section shall be construed to permit the disclosure of the contents of personnel files, personal medical reports, or any other information in a manner to invade the individual privacy of an employee or citizen of the United States except as otherwise provided in this chapter;

(3) The right to communicate freely and openly with members of the Council and to respond fully and with candor to inquiries from committees of the Council, and from members of the Council; provided, however, that nothing in this section shall be construed to permit the invasion of the individual privacy of other employees or of citizens of the United States;

(4) The right to assemble in public places for the free discussion of matters of interest to themselves and to the public and the right to notify, on their own time, fellow employees and the public of these meetings;

(5) The right to humane, dignified, and reasonable conditions of employment, which allow for personal growth and self-fulfillment, and for the unhindered discharge of job responsibilities;

(6) The right to individual privacy; provided, however, that nothing in this section shall limit in any manner an employee's access to his or her own personnel file, medical report file, or any other file or document concerning his or her status or performance within his or her agency, except as otherwise provided in subchapter XXXII;

(7) Each employee of the District government shall make all protected disclosures concerning any violation of law, rule, or regulation, contract, misuse of government resources or other disclosure enumerated in § 1-616.12(a)(6), as soon as the employee becomes aware of the violation or misuse of resources;

(8) Each supervisor employed by the District government shall make all protected disclosures involving any violation of law, rule, regulation or contract pursuant to § 1-616.12(a)(6)(D) as soon as the supervisor becomes aware of the violation;

(9) The failure of a supervisor to make protected disclosures pursuant to § 1-616.12(a)(6)(D) shall be a basis for disciplinary action including dismissal;

(10) Upon receipt of an adjudicative finding that a protected activity was a contributing factor in an alleged prohibited personnel action, the appropriate agency head shall immediately institute disciplinary action against the offending supervisor; and

(11) Disciplinary action taken pursuant to this section shall follow the procedures of § 1-617.1, where applicable. (Mar. 3, 1979, D.C. Law 2-139, § 1558, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

Legislative history of Law 12-160. — See note to § 1-602.1.

References in text. — Section 1-617.1, referred to in paragraph (11), was repealed by D.C. Law 12-124, § 101(r).

"This act," referred to in paragraph (2), is D.C. Law 12-160.

§ 1-616.19. Applicability.

This subchapter shall apply to actions taken after July 13, 1998. (Mar. 3, 1979, D.C. Law 2-139, § 1559, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Effect of amendments. — D.C. Law 12-160 added this section.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-616.11.

Legislative history of Law 12-160. — See note to § 1-602.1.

Subchapter XVII. Adverse Actions; Grievances.

§ 1-617.1. Adverse actions.

Repealed.

(1973 Ed., § 1-346.1; Mar. 3, 1979, D.C. Law 2-139, § 1601, 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-109, § 4(a), 27 DCR 3785; Sept. 5, 1985, D.C. Law 6-19, § 14(a), 32 DCR 3590; Feb. 24, 1987, D.C. Law 6-177, § 3(t), 33 DCR 7241; Mar. 24, 1990, D.C. Law 8-98, § 2, 37 DCR 1058; May 15, 1990, D.C. Law 8-128, § 2(a), 37 DCR 2099; Aug. 1, 1996, D.C. Law 11-152, § 302(s), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

Emergency act amendments. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(r) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-617.2. Grievances.

Repealed.

(1973 Ed., § 1-346.2; Mar. 3, 1979, D.C. Law 2-139, § 1602, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(u), 33 DCR 7241; May 15, 1990, D.C. Law 8-128, § 2(b), 37 DCR 2099; Aug. 1, 1996, D.C. Law 11-152, § 302(t), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

See note to § 1-617.1.

Legislative history of Law — See note to § 1-603.1.

Applicability of § 101(r) of D.C. Law 12-124. — See note to § 1-617.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(r) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-617.3. Procedures and appeals.

Repealed.

(1973 Ed., § 1-346.3; Mar. 3, 1979, D.C. Law 2-139, § 1603, 25 DCR 5740; May

15, 1990, D.C. Law 8-128, § 2(c), 37 DCR 2099; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

Emergency act amendments. — See note to § 1-617.1

Legislative history of Law — See note to § 1-603.1.

Applicability of § 101(r) of D.C. Law 12-124. — See note to § 1-617.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(r) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Subchapter XVII-A. General Discipline and Grievances.

§ 1-617.51. Policy.

The District of Columbia government finds that a radical redesign of the adverse and corrective action system by replacing it with more positive approaches toward employee discipline is critical to achieving organizational effectiveness. To that end, the Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations to establish a disciplinary system that includes:

- (1) A provision that disciplinary actions may only be taken for cause;
- (2) A definition of the causes for which a disciplinary action may be taken;
- (3) Prior written notice of the grounds on which the action is proposed to be taken;
- (4) Except as provided in paragraph (5) of this section, a written opportunity to be heard before the action becomes effective, unless the agency head finds that taking action prior to the exercise of such opportunity is necessary to protect the integrity of government operations, in which case an opportunity to be heard shall be afforded within a reasonable time after the action becomes effective; and
- (5) An opportunity to be heard within a reasonable time after the action becomes effective when the agency head finds that taking action is necessary because the employee's conduct threatens the integrity of government operations; constitutes an immediate hazard to the agency, to other District employees, or to the employee; or is detrimental to the public health, safety or welfare. (Mar. 3, 1979, D.C. Law 2-139, § 1651, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(s) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following:

“Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus

Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the

provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further,

nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

§ 1-617.52. Disciplinary grievances and appeals.

(a) An official reprimand or a suspension of less than 10 days may be contested as a grievance pursuant to § 1-617.53 except that the grievance must be filed within 10 days of receipt of the final decision on the reprimand or suspension.

(b) An appeal from a removal, a reduction in grade, or suspension of 10 days or more may be made to the Office of Employee Appeals. When, upon appeal, the action or decision by an agency is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the Office of Employee Appeals shall be taken in accordance with the provisions of subchapter VI of this chapter within 30 days of the OEA decision.

(c) A grievance pursuant to subsection (a) of this section or an appeal pursuant to subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to § 1-606.3, or the negotiated grievance procedure, but not both.

(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first. (Mar. 3, 1979, D.C. Law 2-139, § 1652, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(s) of D.C. Law 12-124. — See note to § 1-617.51.

§ 1-617.53. Grievances.

(a) The Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations providing procedures for the prompt handling of grievances of employees and applicants for employment. The grievance system shall be

made known to all employees and shall provide for an alternative dispute resolution mechanism. The grievance system shall provide for the expeditious adjustment of grievances and complaints.

(b) Except when an employee is grieving a disciplinary action pursuant to § 1-617.52, no employee or applicant shall present a grievance pursuant to this section more than 45 days, not including Saturdays, Sundays, or legal holidays, after the date that the employee knew or should have known of the act or occurrence that is the subject of the grievance. (Mar. 3, 1979, D.C. Law 2-139, § 1653, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Applicability of § 101(s) of D.C. Law 12-124. — See note to § 1-617.51.

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-617.54. Administrative leave; enforced leave.

(a) Notwithstanding any other provision of this subchapter, a personnel authority may authorize the placing of an employee on annual leave or leave without pay, as provided in this section, if:

(1) A determination has been made that the employee utilized fraud in securing his or her appointment or that he or she falsified official records;

(2) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of nolo contendere); or

(3) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of nolo contendere) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.

(b) Prior to placing an employee on enforced leave pursuant to this section, an employee shall initially be placed on administrative leave for a period of 5 work days, followed by enforced annual leave or, if no annual leave is available, leave without pay. The employee shall remain in this status until such time as an action in accordance with regulations issued pursuant to § 1-617.51, taken as a result of the event that caused this administrative action, is effected or a determination is made that no such action in accordance with regulations issued pursuant to § 1-617.51 will be taken.

(c) An employee to be placed on enforced leave shall be provided with a written notice proposing that action during the 5-day period of administrative leave. To ensure receipt within the 5-day period, the initial delivery of notice may be accomplished either in person or by reading the notice to the employee over the telephone prior to actual delivery of the written notice.

(d) A written notice issued pursuant to this section shall inform the employee of the following:

(1) The reasons for the proposed enforced leave;

(2) The beginning and ending dates of administrative leave;

(3) The beginning date of the proposed enforced leave;

(4) His or her right to respond, orally or in writing, or both, to the notice; and

(5) His or her right to be represented by an attorney or other representative.

(e) Within the 5-day administrative leave period, the employee's explanation, if any, and statements of any witnesses shall be considered and a written decision shall be issued by the personnel authority.

(f) If a determination is made to place the employee on annual leave or leave without pay, the decision letter shall inform him or her of the placement on enforced leave, the date the leave is to commence, and his or her right to grieve the action within 10 days of receipt of the written decision letter.

(g) If the basis for placing an employee on enforced leave pursuant to this section does not result in the taking of a disciplinary action pursuant to § 1-617.52 (or, in the case of an incumbent of a statutory position, the employee is not disciplined or removed in accordance with the provisions of the statute establishing the position), any annual leave or pay lost as a result of this administrative action shall be restored retroactively. (Mar. 3, 1979, D.C. Law 2-139, § 1654, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-264, § 5(c), 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-124 added this section.

D.C. Law 12-264, in (b), substituted "in accordance with regulations issued pursuant to § 1-617.51" for "pursuant to § 1-617.52" twice.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-264. — See note to § 1-603.1.

Applicability of § 101(s) of D.C. Law 12-124. — See note to § 1-617.51.

Subchapter XVIII. Labor-Management Relations.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-618.1. Policy.

(a) The District of Columbia government finds and declares that an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public.

(b) Each employee of the District government has the right, freely and without fear of penalty or reprisal:

(1) To form, join, and assist a labor organization or to refrain from this activity;

(2) To engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative; and

(3) To be protected in the exercise of these rights.

(c) The Mayor or appropriate personnel authority, including his or her or its duly designated representative(s), shall meet at reasonable times with exclusive employee representatives to bargain collectively in good faith.

(d) Subsection (b) of this section does not authorize participation in the management of a labor organization or activity as a representative of such an organization by a supervisor, or management official or by an employee when the participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee. Supervisor means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The definition of supervisor shall include an incumbent of a position which is classified at a level higher than it would have been had the incumbent not performed some or all of the above duties. (1973 Ed., § 1-347.1; Mar. 3, 1979, D.C. Law 2-139, § 1701, 25 DCR 5740.)

Cross references. — As to the Employee Deferred Compensation Program, see § 47-3601.

Legislative history of Law 2-139. — See note to § 1-601.1.

Establishment of Labor Liaisons. — See Mayor's Order 88-101, April 26, 1988.

Cited in Washington Teachers' Union Local 6 v. District of Columbia, 115 WLR 1057 (Super. Ct.).

§ 1-618.2. Labor-management relations program established; contents; impasse resolution.

(a) The Public Employee Relations Board (hereinafter in this subchapter referred to as the "Board") shall issue rules and regulations establishing a labor-management relations program to implement the policy set forth in this subchapter.

(b) The labor-management relations program shall include:

(1) A system for the orderly resolution of questions concerning the recognition of majority representatives of employees;

(2) The resolution of unfair labor practice allegations;

(3) The protection of employee rights as set forth in § 1-618.6;

(4) The right of employees to participate through their duly-designated exclusive representative in collective bargaining concerning terms and conditions of employment as may be appropriate under this chapter and rules and regulations issued pursuant thereto;

(5) The scope of bargaining;

(6) The resolution of negotiation impasses concerning matters appropriate for collective bargaining; and

(7) Any other matters which affect employee-employer relations.

(c) Impasse resolution machinery may include, but need not be limited to, the following:

(1) Mediation;

(2) Fact-finding;

(3) Advisory arbitration;

(4) Request for injunction;

(5) Binding arbitration;

(6) Final best offer binding arbitration; and

(7) Final best offer binding arbitration item by item on noncompensation matters.

(d) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, further negotiation appears to be unproductive to the Board, an impasse shall be deemed to have occurred. Where deemed appropriate, impasse resolution procedures may be conducted by the Board, its staff or third parties chosen either by the Board or by the mutual concurrence of the parties to the dispute. Impasse resolution machinery may be invoked by either party or on application of the Board. The choice of the form(s) of impasse resolution machinery to be utilized in a particular instance shall be the prerogative of the Board, after appropriate consultation with the interested parties. In considering the appropriate award for each impasse item to be resolved, any third party shall consider at least the following criteria:

(1) Existing laws and rules and regulations which bear on the item in dispute;

(2) Ability of the District to comply with the terms of the award;

(3) The need to protect and maintain the public health, safety and welfare; and

(4) The need to maintain personnel policies that are fair, reasonable, and consistent with the objectives of this chapter. (1973 Ed., § 1-347.2; Mar. 3, 1979, D.C. Law 2-139, § 1702, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Collective bargaining. — The teachers have an interest not just in the total number of work days per school year, but also in which days they must be on duty. While the total number of days worked remains the same with the school's changes, the timing of those work days does not. The changes impact on a legitimate, direct interest of the teachers in their basic work life and terms and conditions of employment under the Comprehensive Merit Personnel Act. Therefore, the subjects at issue fall within the scope of those items under the

CMPA about which the school and the teachers must generally bargain. *Washington Teachers' Union Local 6 v. District of Columbia*, 115 WLR 1057 (Super. Ct.).

Cited in *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988); *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, App. D.C., 631 A.2d 1205 (1993); *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993); *District of Columbia v. Fraternal Order of Police*, App. D.C., 691 A.2d 115 (1997).

§ 1-618.3. Standards of conduct for labor organizations.

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) The exclusion from office in the organization of any person identified with corrupt influences;

(3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(4) Fair elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) The Board may accept any of the following as evidence that a labor organization's operations meet the requirements of subsection (a) of this section:

(1) A statement in writing that the labor organization is a member of the American Federation of Labor-Congress of Industrial Organizations and is governed by and subscribes to the American Federation of Labor-Congress of Industrial Organizations Codes of Ethical Practice;

(2) A copy of the labor organization's constitution and bylaws which contain explicit provisions covering these standards;

(3) A copy of rules and regulations of the organization which have been officially adopted by the membership, which contain explicit provisions covering these standards; or

(4) An official certification in writing from a labor organization stating that the labor organization subscribes to the standards of conduct for labor organizations, as set forth in this section.

(c) The Board shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with the Board. (1973 Ed., § 1-347.3; Mar. 3, 1979, D.C. 2-139, § 1703, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Power of Board. — This section and the regulations promulgated by the Board empower the Board to review complaints alleging the failure of a recognized labor organization to comply with the standards of conduct mandated by the section. *Fraternal Order of Police MPD Labor Comm. v. Public Employee Relations Bd.*, App. D.C., 516 A.2d 501 (1986).

Exhausting union remedies. — An individual need not exhaust available union remedies before seeking the Board's services. It is essential that individuals be completely free to petition the Board for redress of such grievances. *Fraternal Order of Police MPD Labor Comm. v. Public Employee Relations Bd.*, App. D.C., 516 A.2d 501 (1986).

Jurisdiction. — Trial court lacked jurisdiction to hear employee's claim regarding union's alleged breach of the duty of fair representation despite the fact that employee had sought representation from the union pursuant to this act's provisions regarding administrative appeals, rather than pursuant to the provisions regarding grievances under a collective bargaining agreement. *Cooper v. AFCSME*, Local 1033, App. D.C., 656 A.2d 1141 (1995).

Form of action. — Employee cannot defeat the exclusive jurisdiction in the Public Employee Relations Board (PERB) by casting his complaint against the union for breach of duty of fair representation in the form of a common law breach of contract. *Cooper v. AFCSME*, Local 1033, App. D.C., 656 A.2d 1141 (1995).

§ 1-618.4. Unfair labor practices.

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or

(5) Refusing to bargain collectively in good faith with the exclusive representative.

(b) Employees, labor organizations, their agents, or representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

(2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-618.6;

(3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;

(4) Engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents, or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and

(5) Engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay, or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in § 1-618.6. (1973 Ed., § 1-347.4; Mar. 3, 1979, D.C. Law 2-139, § 1704, 25 DCR 5740; Sept. 18, 1998, D.C. Law 12-151, § 2(c), 45 DCR 4043.)

Effect of amendments. — D.C. Law 12-151 substituted “this subchapter” for “this chapter” in (a)(4).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-151. — See note to § 1-605.2.

References in text. — The reference to “this title” in (a)(4) should probably be read to mean “this chapter.”

Public Employee Relations Board has primary jurisdiction to determine whether a particular act or omission constitutes an unfair labor practice, under this chapter, subject only to review by the courts under well established principles of administrative law. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

Public Employees Relations Board juris-

diction, generally. — Issues of retaliation were beyond the jurisdiction of the Office of Employee Appeals and were specifically reserved for the Public Employees Relations Board. *Office of D.C. Controller v. Frost*, App. D.C., 638 A.2d 657 (1994).

Timeliness of complaints. — Where former bus driver alleged improper firing and union’s breach of its duty of fair representation, but failed to seek representation during specified time, he defeated his claim of union’s violation of its duty to represent him. *Hoggard v. District of Columbia Pub. Employee Relations Bd.*, App. D.C., 655 A.2d 320 (1995).

Cited in *Fraternal Order of Police MPD Labor Comm. v. Public Employee Relations Bd.*, App. D.C., 516 A.2d 501 (1986); *Russell v. District of Columbia*, 747 F. Supp. 72 (D.D.C. 1990), *aff’d*, 984 F.2d 1255 (D.C. Cir. 1993);

District of Columbia Dep't of Admin. Servs. v. International Bhd. of Police Officers, Local 445, App. D.C., 680 A.2d 434 (1996).

§ 1-618.5. Strikes prohibited.

It shall be unlawful for any District government employee or labor organization to participate in, authorize, or ratify a strike against the District. (1973 Ed., § 1-347.5; Mar. 3, 1979, D.C. Law 2-139, § 1705, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.6. Employee rights.

(a) All employees shall have the right:

- (1) To organize a labor organization free from interference, restraint, or coercion;
- (2) To form, join, or assist any labor organization or to refrain from such activity; and
- (3) To bargain collectively through representatives of their own choosing as provided in this subchapter.

(b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: Provided, however, that the exclusive representative is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the complaint. Any employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization. Adjustments of grievances must be consistent with the terms of the applicable collective bargaining agreement. Where the employee is not represented by the union with exclusive recognition for the unit, no adjustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances. (1973 Ed., § 1-347.6; Mar. 3, 1979, D.C. Law 2-139, § 1706, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-618.2 and 1-618.4.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.7. Union security; dues deduction.

Any labor organization which has been certified as the exclusive representative shall, upon request, have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues. Such authorization, costs, and termination shall be proper subjects of collective bargaining. Service fees may be deducted from an employee's salary by the employer if such a provision is contained in the bargaining agreement. (1973 Ed., § 1-347.7; Mar. 3, 1979, D.C. Law 2-139, § 1707, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Unlawful withholding claimants required to exhaust administrative remedies. — Board of Education employees claiming Board of Education had unlawfully

withheld union dues from their wages after the expiration of a collective bargaining agreement were properly required to exhaust their administrative remedies before bringing suit in Superior Court. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

§ 1-618.8. Management rights; matters subject to collective bargaining.

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:

- (1) To direct employees of the agencies;
- (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
- (3) To relieve employees of duties because of lack of work or other legitimate reasons;

(4) To maintain the efficiency of the District government operations entrusted to them;

(5) To determine the mission of the agency, its budget, its organization, the number of employees, and the number, types, and grades of positions of employees assigned to an organizational unit, work project, or tour of duty, and the technology of performing its work; or its internal security practices; and

(6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in § 1-618.16. (1973 Ed., § 1-347.8; Mar. 3, 1979, D.C. Law 2-139, § 1708, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-608.1, 1-625.5, 1-625.6, and 6-913.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

Compensation of Members of Boards and Commissions Emergency Disapproval Resolution of 1993. — Pursuant to Resolution 10-122, effective August 6, 1993, the Council disapproved, on an emergency basis, rules to implement § 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

Generally. — The beginning date of the school year and Good Friday's status as a holiday are not mandatory subjects of collective bargaining between the District of Columbia Public Schools and the Washington Teachers' Union. *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989).

Cited in *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, App. D.C., 631 A.2d 1205 (1993).

§ 1-618.9. Unit determination.

(a) The determination of an appropriate unit will be made on a case-to-case basis and will be made on the basis of a properly-supported request from a labor organization. No particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also

be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed, and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as 1 factor in evaluating the community of interest of employees in a proposed unit.

(b) A unit shall not be established if it includes the following:

(1) Any management official or supervisor: Except, that with respect to fire fighters, a unit that includes both supervisors and nonsupervisors may be considered: Provided, further, that supervisors employed by the District of Columbia Board of Education may form a unit which does not include nonsupervisors;

(2) A confidential employee;

(3) An employee engaged in personnel work in other than a purely clerical capacity;

(4) An employee engaged in administering the provisions of this subchapter;

(5) Both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit; or

(6) Employees of the Council of the District of Columbia.

(c) Two or more units for which the labor organization holds exclusive recognition within an agency may be consolidated into a single larger unit if the Board determines the larger unit to be appropriate. The Board shall certify the labor organization as the exclusive representative in the new unit when the unit is found appropriate. (1973 Ed., § 1-347.9; Mar. 3, 1979, D.C. Law 2-139, § 1709, 25 DCR 5740.)

Section references. — This section is referred to in § 1-618.11.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.10. Selection of exclusive representatives; elections.

(a) Exclusive recognition shall be granted to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election, conducted by secret ballot, or by any other method in conformity with such rules and regulations as may be prescribed by the Board.

(b)(1) The employer may recognize, without an election, a labor organization as the exclusive representative for purpose of collective bargaining if an alternative method for determining majority status, such as a card check showing actual membership in the labor organization seeking recognition, has been approved by the Board.

(2) The Board shall issue rules and regulations which provide procedures for decertification of exclusive representatives upon the request of 30 percent of the employees or the District and the holding of an election. Such rules and regulations issued by the Board shall prescribe the criteria under which the

District may request decertification, such as lack of any unit activity over a period of time.

(c) Representation elections shall be conducted by an impartial body selected by the mutual agreement of the parties or, in the absence of a mutual agreement, by the Board. The entity conducting the election shall be subject to the provisions of this chapter, those rules and regulations as may be issued by the Board, or any election agreement as may be reached which is not inconsistent with this subchapter.

(d) The Board shall certify the results of each election within 10 working days after the final tally of votes, if:

(1) Within the meaning of such rules and regulations as the Board may issue, no objection to the election is filed alleging that there has been conduct which affected the outcome of the election; or

(2) The Board has determined that the number of challenged ballots is not sufficient to affect the outcome of the election.

(e) If the Board has reason to believe that such allegations or challenges may be valid, the Board shall hold a hearing on the matter within 2 weeks after the date of receipt of the objection. The Board shall give due notice of the hearing to all parties. If the Board determines that the outcome of the election was affected, even by third-party interference, or if the Board determines that the number of challenged ballots was sufficient to affect the outcome of the election, it shall require corrective action and may order a new election. If the Board determines that the alleged conduct did not affect the outcome of the election, it shall immediately certify the election results.

(f) A labor organization seeking exclusive recognition shall submit to the Board and the appropriate agency a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. (1973 Ed., § 1-347.10; Mar. 3, 1979, D.C. Law 2-139, § 1710, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-618.11, 1-627.4, and 4-610.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.11. Rights accompanying exclusive recognition.

(a) The labor organization which has been certified to be the exclusive representative of all employees in the unit shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to membership in the labor organization: Provided, however, that the employee pays dues or service fees in an amount equal to the dues of the employees' organizations. Agency shop and other labor organization security provisions should be an appropriate issue for collective bargaining.

(b) Bargaining units established at the time this chapter becomes effective shall continue to be recognized as appropriate units subject to § 1-618.9(c), and labor organizations which have exclusive recognition in bargaining units existing at the time this chapter becomes effective shall continue to enjoy exclusive recognition in these units subject to § 1-618.10(b)(2). (1973 Ed., § 1-347.11; Mar. 3, 1979, D.C. Law 2-139, § 1711, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.12. Sunshine provisions.

Collective bargaining sessions between the District and employee organization representatives shall not be open to the public. All fact-finding proceedings under this subchapter shall be open to the public. (1973 Ed., § 1-347.12; Mar. 3, 1979, D.C. Law 2-139, § 1712, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.13. Remedies; enforcement; judicial review; payment of costs.

(a) Remedies of the Board may include, but shall not be limited to, orders which: Withdraw or decertify recognition of a labor organization; direct a new representation election; recommend that disciplinary action be taken against an employee or group of employees by an appropriate agency head; reinstate, with or without back pay, or otherwise make whole, the employment or tenure of any employee, who the Board finds has suffered adverse economic effects in violation of this subchapter, though for adequate cause under the provisions of subchapter XVII of this chapter; compel bargaining in good faith; compel a labor organization or the District to desist from conduct prohibited under this subchapter; or direct compliance with the provisions of this subchapter.

(b) The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board.

(c) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within 30 days after the final order has been issued. The Court shall have the same jurisdiction to review the Board's order and to grant to the Board such order of enforcement as in the case of a request by the Board under subsection (b) of this section.

(d) The Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine. (1973 Ed., § 1-347.13; Mar. 3, 1979, D.C. Law 2-139, § 1713, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Exhaustion of administrative remedies required. — Before seeking relief in the courts, plaintiffs must exhaust their administrative remedies before the Public Employee Relations Board. *Hawkins v. Hall*, App. D.C., 537 A.2d 571 (1988).

No entitlement to automatic stay when appeal lodged pursuant to subsection (c).

— An aggrieved person is not entitled to an automatic stay of the Board's order when an appeal is lodged pursuant to subsection (c) of this section since an automatic stay would prohibit the exercise of the court's discretion on the question of a stay pendente lite. *International Bhd. of Police Officers v. Public Employee Relations Bd.*, 110 WLR 1317 (Super. Ct.).

Jurisdiction. — A public employee union's petition for review by the Superior Court was filed within the period prescribed by this section and the Superior Court therefore had subject matter jurisdiction. *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, App. D.C., 631 A.2d 1205 (1993).

Cited in *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989); *Teamsters Local Union 1714 v. Public Employee Relations Bd.*, App. D.C., 579 A.2d 706 (1990); *District of Columbia Dep't of Admin. Servs. v. International Bhd. of Police Officers, Local 445*, App. D.C., 680 A.2d 434 (1996).

§ 1-618.14. Timeliness of decisions.

All decisions of the Board shall be rendered within a reasonable period of time, and in no event later than 120 days after the matter is submitted or referred to it for a decision. (1973 Ed., § 1-347.14; Mar. 3, 1979, D.C. Law 2-139, § 1714, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-618.15. Collective bargaining agreements.

(a) An agreement with a labor organization is subject to the approval of the Mayor or his or her designee, or in the case of employees of the District of Columbia Board of Education or the Board of Trustees of the University of the District of Columbia, by the respective Boards. An agreement shall be approved within 45 days from the date of its execution by the parties, if it conforms to applicable law. If disapproved because certain provisions are asserted to be contrary to law, the agreement shall either be returned to the parties for renegotiation of the offensive provisions or such provisions shall be deleted from the agreement. An agreement which has not been approved or disapproved within the prescribed period of 45 days shall go into effect on the 46th day and shall be binding on the parties.

(b) The Mayor and each appropriate personnel authority shall submit the collective bargaining agreement to the Council for its information. (1973 Ed., § 1-347.15; Mar. 3, 1979, D.C. Law 2-139, § 1715, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(v), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(u), 43 DCR 2978.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b)

of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-618.16. Collective bargaining concerning compensation.

(a) The Board shall provide for collective bargaining concerning compensation under the procedures of and on the dates provided in § 1-618.17. The Mayor, the District of Columbia Board of Education for its educational employees, and the Board of Trustees of the University of the District of Columbia for its educational employees shall negotiate agreements regarding noncompensation issues at the same time as compensation issues.

(b) The provisions of this section shall become effective on January 1, 1980, and shall apply to all employees, including employees described in § 1-602.4, of a particular occupational group who are represented by a labor organization which has been granted exclusive recognition under this chapter by the Board. The determination of an appropriate unit for the purpose of negotiations concerning compensation shall not require a request from a labor organization. In determining appropriate bargaining units for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employer or employee groups as may be appropriate. (1973 Ed., § 1-347.16; Mar. 3, 1979, D.C. Law 2-139, § 1716, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(w), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(v), 43 DCR 2978.)

Section references. — This section is referred to in §§ 1-602.6, 1-618.8, 1-618.17, 1-637.1, 31-1235, and 31-1252.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Cited in District of Columbia v. American Fed'n of Gov't Employees, App. D.C., 619 A.2d 77 (1993), cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993); District of Columbia v. Fraternal Order of Police, App. D.C., 691 A.2d 115 (1997).

§ 1-618.17. Collective bargaining concerning compensation.

(a) Collective bargaining concerning compensation is authorized as provided in §§ 1-602.6 and 1-618.16. Such compensation bargaining shall preempt other provisions of this subchapter except as provided in this section. The principles of § 1-612.3 shall apply to compensation set under the provisions of this section.

(b) As provided in this section, the Mayor, the Board of Education, the Board of Trustees of the University of the District of Columbia, and each independent personnel authority, or any combination of the above ("management") shall meet with labor organizations ("labor") which have been authorized to negotiate compensation at reasonable times in advance of the District's budget making process to negotiate in good faith with respect to salary, wages, health

benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters.

(c) Before the expiration of any existing negotiated agreement between the parties, the parties may agree to begin a thorough study of the compensation being paid to comparable occupational groups of employees in other jurisdictions in the Washington, D.C. Standard Metropolitan Statistical Area and the nation's 30 largest cities by population. The annual study may include hours of work, health benefits, and vacation time. The annual study may also include the current percentage change in the Consumer Price Index for the Washington Metropolitan Area published by the Bureau of Labor Statistics, United States Department of Labor.

(d) Repealed.

(e)(1) If the parties choose to conduct an annual study pursuant to subsection (c) of this section, the results of the annual study shall be made public and shall be available to the parties involved in negotiations for such use as they may mutually agree upon.

(2) The results of the annual study may be updated at any time by any party to the negotiation. Such updates shall constitute supplements to the annual study and shall be made public and utilized in the same manner as the annual study pursuant to paragraph (1) of this subsection.

(f)(1) Negotiations among the parties to existing contracts shall commence no later than 90 days before the expiration of the existing contracts. The failure of any party to begin negotiations by 90 days before the expiration of existing contracts, without the express written consent of all parties, shall constitute an automatic impasse. Any party may notify the Executive Director of the Public Employee Relations Board in writing of this automatic impasse. The Executive Director shall assist in the resolution of this automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the automatic impasse within 30 days, or any shorter period designated by the mediator, the Executive Director shall then appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearings it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The award shall be issued within 20 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties in the dispute.

(2) Negotiations shall continue among the parties until a settlement is reached or until 180 days after negotiations have commenced. If the parties have failed to reach settlement on any issues by the 180th day, then an automatic impasse may be declared by any party. The declaring party shall promptly notify the Executive Director of the Public Employee Relations Board in writing of an impasse. The Executive Director shall assist in the resolution of this declared automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the declared automatic impasse within 30 days, or any shorter period designated by the mediator, or before the automatic impasse date, the

Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for such automatic impasse arbitration. The award shall be issued within 45 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3) If the parties reach an impasse on any issues in negotiations before the declared automatic impasse date, any party shall promptly notify the Executive Director of the Public Employee Relations Board in writing. The Executive Director shall assist in the resolution of this impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the impasse within 30 days, or any shorter period designated by the mediator, or before the automatic impasse date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for this impasse arbitration. The award shall be issued within 20 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(4) If the procedures set forth in paragraph (1), (2), or (3) of this subsection are implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both.

(5) The factfinder, mediator, and any members of the Board of Arbitration appointed by the Executive Director of the Public Employee Relations Board shall be entitled to compensation at the maximum daily rate allowable by law for each day they are actually engaged in performing services under this section. Compensation for arbitration shall be divided equally and paid one-half by management and one-half by labor; compensation for mediation and fact-finding shall be paid by the moving party, or shared if by mutual request.

(g) Multi-year compensation agreements are encouraged. No compensation agreement shall be for a period of less than 3 years. When multi-year agreements are negotiated, the annual negotiations for the years in which a new contract is not being negotiated shall be suspended.

(h) Compensation negotiations pursuant to this section shall be confidential among the parties; provided, however, that the Council may appoint observers from its membership and staff, or both, to the negotiations. Such Council observers will be responsible for informing the members of the Council of the progress of negotiations. All information concerning negotiations shall be considered confidential until impasse or settlement. Management shall give the Council the same prior notice of negotiation proceedings that it gives to all parties to the negotiations.

(i)(1) The Mayor shall transmit all settlements, including arbitration awards, to the Council with a budget request act, a supplemental budget request act, a budget amendment act, or a reprogramming, as appropriate; except that when a settlement, including an arbitrator's award, has been fully funded by an enacted budget request act, supplemental budget request act, or budget amendment act or an approved reprogramming request, the Mayor shall submit the settlement, including an arbitrator's award, with a certification that the settlement, including arbitrator's award, is fully funded by the previously enacted budget measure or approved reprogramming. The budget request act, supplemental budget request act, budget amendment act, or reprogramming shall fully fund the settlement for the fiscal year to which it applies.

(2) At the same time the Mayor transmits a settlement, including any arbitration award, pursuant to paragraph (1) of this subsection, the Mayor shall also transmit a financial plan that includes proposed funding for both actual and annualization costs of settlements for future fiscal years contained in a multi-year compensation agreement.

(3) The Mayor shall fully support the passage of settlements by every reasonable means before all legislative bodies, except that the Mayor is not required to support Council approval of an arbitrator's award, or to support Council approval of a settlement negotiated by the Board of Education, the Board of Trustees of the University of the District of Columbia, or other independent personnel authority, unless the Mayor participated in the negotiations.

(j) A settlement, including an arbitrator's award, shall take effect on the 30th calendar day, excluding days of Council recess, after the Mayor and the Council enact the budget request act, the supplemental budget request act, or the budget amendment act, or approve the reprogramming, as appropriate, that contains the funded settlement, unless prior to the 30th calendar day, the Council accepts or rejects the settlement, including an arbitrator's award, by resolution. In the case of a settlement, including an arbitrator's award, submitted after the enactment of budget legislation or the approval of a reprogramming that fully funds the settlement, including arbitrator's award, the settlement, including arbitrator's award shall take effect on the 30th calendar day, excluding days of Council recess, after the Mayor transmits the settlement, including arbitrator's award, to the Council with the Mayor's certification that the settlement, including arbitrator's award, has been fully funded in previously enacted budget legislation or an approved reprogramming, unless prior to the 30th calendar day, the Council accepts or rejects the settlement, including arbitrator's award, by resolution. If the Council rejects a settlement, including an arbitrator's award, then the settlement shall be returned to the parties for renegotiation, with specific reasons for the rejection appended to the document disclosing the rejection of the settlement.

(k) The Mayor shall fully fund in future fiscal year budget requests, any settlement, including an arbitrator's award, for future fiscal years contained in a multi-year compensation agreement that has been approved pursuant to this section. Any settlement, including an arbitrator's award, that has been

approved pursuant to this section shall be included in either the District budget request or in any supplemental budget request and shall be fully supported by the District by every reasonable means before Congressional bodies.

(l) Notwithstanding any provisions of subchapters XXII, XXIII, or XXVII of this chapter to the contrary, the health, life, and retirement programs authorized by these subchapters are proper subjects of collective bargaining under this section.

(m) When the Public Employee Relations Board ("Board") is required to determine an appropriate bargaining unit for the purpose of compensation negotiations pursuant to § 1-618.16, negotiations for compensation between management and the exclusive representative of the appropriate bargaining unit shall begin no later than 90 days after the Board's determination. The timetable for the conduct and conclusion of such negotiations shall be that provided for in subsection (f) of this section. The Mayor shall negotiate agreements concerning working conditions at the same time as he or she negotiates compensation issues. (1973 Ed., § 1-341.13; Mar. 3, 1979, D.C. Law 2-139, § 1113, 25 DCR 5740; redesignated as § 1717, Mar. 4, 1981, D.C. Law 3-130, § 2(f), 28 DCR 277; Apr. 25, 1984, D.C. Law 5-77, § 2, 31 DCR 1225; Aug. 1, 1985, D.C. Law 6-15, § 7(f), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(x), 33 DCR 7241; June 5, 1987, D.C. Law 7-6, § 2, 34 DCR 2637; July 25, 1987, D.C. Law 7-16, § 2, 34 DCR 3799; Oct. 1, 1987, D.C. Law 7-27, § 2(h), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 36(b), 35 DCR 147; Mar. 17, 1993, D.C. Law 9-243, § 2, 40 DCR 636; May 16, 1995, D.C. Law 10-255, § 2(b), 41 DCR 5193; Aug. 1, 1996, D.C. Law 11-152, § 302(w), 43 DCR 2978; Mar. 20, 1998, D.C. Law 12-60, § 1001, 44 DCR 7378; June 10, 1998, D.C. Law 12-124, § 101(t), 45 DCR 2464; Sept. 18, 1998, D.C. Law 12-151, § 2(b), 45 DCR 4043.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-618.16 and 1-637.1.

Effect of amendments. — D.C. Law 12-60, in (b), substituted "hours, and any other compensation matters, except shift differential and premium pay" for "shift differential, premium pay, hours, and any other compensation matters," and added the last sentence.

D.C. Law 12-124 rewrote (b).

D.C. Law 12-151, in (f)(2), substituted "45 days" for "20 days" in the third sentence from the end.

Temporary amendment of section. — Section 1001 of D.C. Law 12-59, in (b), substituted "hours, and any other compensation matters, except shift differential and premium pay" for "shift differential, premium pay, hours, and any other compensation matters," and added the last sentence.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary amendment of section, see § 1001 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1001 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-130. — See note to § 1-612.14.

Legislative history of Law 5-77. — Law 5-77 was introduced in Council and assigned Bill No. 5-327, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 31, 1984 and February 14, 1984, respectively. Signed by the Mayor on March 1,

1984, it was assigned Act No. 5-113 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — See note to § 1-608.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 7-6. — Law 7-6 was introduced in Council and assigned Bill No. 7-117. The Bill was adopted on first and second readings on March 17, 1987 and March 31, 1987, respectively. Signed by the Mayor on April 15, 1987, it was assigned Act No. 7-16 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-16. — Law 7-16 was introduced in Council and assigned Bill No. 7-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1987 and May 19, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 7-104. — See note to § 1-604.8.

Legislative history of Law 9-87. — Law 9-87, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Council Review Period Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-387. The Bill was adopted on first and second readings on December 17, 1991, and January 7, 1992, respectively. Approved without the signature of the Mayor on January 30, 1992, it was assigned Act No. 9-150 and transmitted to both Houses of Congress for its review. D.C. Law 9-87 became effective on March 24, 1992.

Legislative history of Law 9-203. — Law 9-203, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation Settlement Review Period Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-660. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Approved without the signature of the Mayor on November 27, 1992, it was assigned Act No. 9-329 and transmitted to both Houses of Congress for its review. D.C. Law 9-203 became effective on March 16, 1993.

Legislative history of Law 9-243. — Law 9-243, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation Settlement Review Period Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-622, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992,

respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-377 and transmitted to both Houses of Congress for its review. D.C. Law 9-243 became effective on March 17, 1993.

Legislative history of Law 10-255. — See note to § 1-612.3.

Legislative history of Law 11-152. — See note to § 1-602.2.

Legislative history of Law 12-59. — See note to § 1-612.8.

Legislative history of Law 12-60. — See note to § 1-612.8.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-151. — See note to § 1-605.2.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Applicability of § 101(t) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Renegotiation of collective bargaining agreements. — Section 1401 of D.C. Law 11-52 provided the terms under which the Mayor shall renegotiate the collective bargaining agreements with all compensation units to reduce employee compensation in order to realize the \$30 million in savings required by the Pay Renegotiation provision of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994.

Section 2 of D.C. Law 11-18 provided the terms under which the Mayor shall renegotiate the collective bargaining agreements with all compensation units to reduce employee compensation in order to realize the \$30 million in savings required by the Pay Renegotiation provision of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994, enacted January 19, 1995 (D.C. Act 10-400; 42 DCR 529).

Section 6(b) of D.C. Law 11-18 provides that the act shall expire on the 225th day of its having taken effect.

Section 1402 of D.C. Law 11-52 amended § 2 of the Budget Implementation Temporary Act of 1995, D.C. Law 11-18, to provide for the exemption of Compensation Units 1, 2, 3, 12, 13, 15, 19, 20, 21, 22, 23, and 29 from the provisions of that section.

Section 3 of D.C. Law 11-27, the Budget Implementation Exemption Temporary Amendment Act of 1995, amended § 2 of D.C. Law 11-18, the Budget Implementation Temporary Act of 1994, to provide for a temporary exemption of union and nonunion firefighters from reduction of base compensation imposed by D.C. Law 11-18, and approved the modified overtime provision of the collective bargaining agreement governing Compensation Unit 4.

Section 4(b) of D.C. Law 11-27 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Omnibus Budget Support Act of 1995.

Approval of memoranda of agreement regarding wage reductions. — Section 1403 of D.C. Law 11-52 provided for the approval of the Memorandum of Understanding between the District and Compensation Units 1 and 29, Compensation Units 12 and 29, Compensation Unit 13, Compensation Unit 15, Compensation Unit 19, Compensation Units 20 and 21, Compensation Unit 22, and Compensation Unit 23, transmitted by the Mayor to Council April 4, 1995, and provided that all wage reductions contained in the agreements for Fiscal Year 1995 shall become effective as of April 30, 1995.

Wages for employees in Compensation Unit 3. — Section 1404 of D.C. Law 11-52 provided for limitations on retention allowances, overtime and holiday pay, shift differentials, nonduty and non pay status, and notice of shift changes for a period beginning April 30, 1995 and ending September 30, 1995, and limitations on retention allowances, overtime and shift changes for Fiscal Year 1996.

Compensation Settlement for Employees in Compensation Unit 12 Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-18, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 12.

Compensation Settlement for Employees in Compensation Unit 19 Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-21, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 19.

Compensation Settlement for Employees in Compensation Unit 18 Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-24, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 18.

Compensation Settlement for Employees in Compensation Unit 4 Approval Emergency Resolution of 1998. — Pursuant

to Resolution 12-432, effective March 3, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for uniformed members of the Fire and Emergency Medical Services Department covered by collective bargaining.

Career and Excepted Service Compensation System Changes for Non-Union Employees and the Negotiated Compensation Agreements for Union Employees of the DOC Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-462, effective April 7, 1998, the Council approved, on an emergency basis, the proposed compensation changes for Career and Excepted Service employees and negotiated compensation agreements for Bargaining Unit employees of the Department of Corrections in Compensation Units 1, 2, 13, and 19.

Compensation Settlement for Employees in Compensation Units 1 and 2 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-484, effective May 5, 1998, the Council approved, the negotiated compensation settlement by the Mayor for certain employees in Compensation Units 1 and 2.

Compensation Settlement for Employees in Compensation Unit 3 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-556, effective June 16, 1998, the Council approved the compensation settlement for employees in Compensation Unit 3.

Compensation Settlement for Doctors, Dentists and Podiatrists in Compensation Unit 19 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-602, effective July 7, 1998, the Council approved, on an emergency basis, the negotiated compensation settlement for Physicians, Dentists, and Podiatrists within Compensation Unit 19 covered by collective bargaining.

Compensation Settlement for Metropolitan Police Department Civilian Communication and Cellblock Employees in Compensation Unit 1 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-768, effective November 10, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for civilian members of the District of Columbia Metropolitan Police Department Communications Division and Cellblock Unit covered by collective bargaining.

Compensation Settlement for Employees in Compensation Unit 4 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-776, effective November 10, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for uniformed members of the Fire and Emergency Medical Services Department covered by collective bargaining.

Compensation Settlement for DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) Employees in Compensation Unit 1 Emergency Declaration Resolution of 1998. — Pursuant to Resolution 12-844, effective December 15, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for civilian employees in series DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) of the Fire and Emergency Medical Services Department in Compensation Unit 1 covered by collective bargaining.

Superior Court lacked jurisdiction to review interest arbitration award where the District of Columbia Council had not approved or rejected the award. *Council of Sch. Officers v. Vaughn*, App. D.C., 553 A.2d 1222 (1989).

Cited in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992); *District of Columbia v. American Fed'n of Gov't Employees*, App. D.C., 619 A.2d 77 (1993), cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993); *District of Columbia v. Fraternal Order of Police*, App. D.C., 691 A.2d 115 (1997).

§ 1-618.18. Public school employee evaluations.

Notwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a nonnegotiable item for collective bargaining purposes. (Apr. 26, 1996, 110 Stat. 1321 [214], Pub. L. 104-134, § 143.)

Subchapter XIX. Employee Conduct.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-619.1. Standards of conduct.

(a) Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(a-1) As a matter of public policy, each employee of the District is encouraged to report, pursuant to § 1-616.3, any violation of a law or rule, or the misuse of government resources, as soon as the employee becomes aware of the violation or misuse of resources.

(b) The Mayor shall issue rules and regulations governing the ethical conduct of all District employees after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, and recognized labor representatives of District employees, and shall require the submission by designated employees at a policy making, contract negotiating, or purchasing level of reports of financial interest in matters which may create conflicts of interest. The Mayor shall provide for the annual auditing of all reports filed under the authority of this subsection. (1973 Ed., § 1-348.1; Mar. 3, 1979, D.C. Law 2-139, § 1801, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(y), 33 DCR 7241; Sept. 26, 1990, D.C. Law 8-169, § 2(b), 37 DCR 4835; Aug. 1, 1996, D.C. Law 11-152, § 302(x), 43 DCR 2978.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 8-169. — See note to § 1-616.3.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-619.2. Conflicts of interest.

No employee of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities. (1973 Ed., § 1-348.2; Mar. 3, 1979, D.C. Law 2-139, § 1802, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983).

§ 1-619.3. Ethics counselors; codification of advisory opinions.

(a) Each agency head shall appoint an employee to serve as the ethics counselor for the agency. Employees so appointed shall be required to undertake and satisfactorily complete such training as is necessary in order to adequately discharge their duties. The training program required by this subsection shall be developed by the Mayor after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, and the District of Columbia Board of Elections and Ethics. The Mayor shall appoint an ethics counselor for the District of Columbia.

(b) Ethics counselors shall issue advisory opinions concerning potential conflicts of interest which are presented by employees of the agency for resolution. The ethics counselor shall issue an advisory opinion within 15 days of receipt of an inquiry from an employee.

(c) The opinions authorized pursuant to this section shall be considered advisory opinions authorized under subsection (c) of § 1-1435, and shall be published in the District of Columbia Register.

(d) All oral communications between employees of an agency and ethics counselors shall be privileged communications, and may not form the basis for any civil or criminal liability. Ethics counselors shall not disclose the nature or contents of such communications, except in accordance with the provisions of subsection (c) of this section.

(e) The Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in subsection (a) of § 1-1462, employees in the Executive Service, and persons appointed under the authority of §§ 1-610.1 through 1-610.3 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or desig-

nated in § 1-610.8 shall not be included within the provisions of this subchapter for the purposes of enforcement. Enforcement of this subchapter and provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended (D.C. Code, § 1-1401 et seq.) for persons included in this section shall be enforced by the District of Columbia Board of Elections and Ethics as provided in the Act entitled “An Act To regulate the election of delegates representing the District of Columbia to national political conventions and for other purposes” (D.C. Code, § 1-1301 et seq.) and the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended (D.C. Code, § 1-1401 et seq.). (1973 Ed., § 1-348.3; Mar. 3, 1979, D.C. Law 2-139, § 1803, 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 3, 27 DCR 963; Feb. 24, 1987, D.C. Law 6-177, § 3(z), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(y), 43 DCR 2978.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-58. — Law 3-58 was introduced in Council and assigned Bill No. 3-158, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the Mayor on February 26, 1980, it was assigned Act No. 3-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Subchapter XX. Incentive Awards.

Cross references. — As to the effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-620.1. Authority to grant awards.

(a) The Mayor and the District of Columbia Board of Education shall issue rules and regulations authorizing the granting of cash and honorary awards to employees for their suggestions, inventions, superior accomplishments, length of service, and other meritorious efforts which contribute to the efficiency, economy, or otherwise improve the operation of the District government.

(b) The Mayor is authorized to make honorary awards to citizens who make significant contributions to the public good, or who submit ideas or inventions which materially benefit the District of Columbia.

(c) Awards to employees of the District government pursuant to this subchapter may include tangible items with a monetary value of no more than \$50 and time off without loss of pay or charge to leave. (1973 Ed., § 1-349.1; Mar. 3, 1979, D.C. Law 2-139, § 1901, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(u)(1), 45 DCR 2464.)

Section references. — This section is referred to in § 1-620.2.

Effect of amendments. — D.C. Law 12-124 added (c).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(u) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided

that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-620.2. Limitation upon awards.

A cash award authorized under the provisions of § 1-620.1(a) may not exceed \$5,000 or 10% of the employee's scheduled rate of basic pay, whichever is greater; except, that in the case of suggestions or inventions resulting in a tangible monetary savings or increased revenues, an award shall be based on a percentage formula of the estimated savings or revenues, not to exceed \$25,000. No cash award shall be granted to an employee without a written determination by the Mayor or the employee's independent personnel authority that set forth the specific reasons the award is justified. The written determination shall be forwarded to the Council for its information within 30 days of its execution. (1973 Ed., § 1-349.2; Mar. 3, 1979, D.C. Law 2-139, § 1902, 25 DCR 5740; Mar. 24, 1990, D.C. Law 8-97, § 3(d), 37 DCR 1046; June 10, 1998, D.C. Law 12-124, § 101(u)(2), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 inserted "or 10% of the employee's scheduled rate of basic pay, whichever is greater" following "not exceed \$5000."

Emergency act amendments. — For temporary addition of § 1-620.3, see § 2(b) of the Comprehensive Merit Personnel Act Pilot Program Emergency Amendment Act of 1997 (D.C. Act 12-120, August 1, 1997, 44 DCR 4643), and see § 2(b) of the Comprehensive Merit Personnel Act Pilot Program Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-178, October 30, 1997, 44 DCR 6946).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(u) of D.C. Law 12-124. — See note to § 1-620.1.

§ 1-620.3. Personnel authority pilot programs.

(a) Notwithstanding any other provision of this subchapter, or any other provision of law or regulation, and consistent with § 1-242, the Mayor may implement pilot personnel programs in the area of incentive awards as related to performance, including gainsharing. Pilot programs may be established during any control period as defined in § 47-393, to help ensure successful implementation of the transformation of the District of Columbia government workforce.

(b) The Mayor may issue rules and regulations to implement these programs. (Mar. 3, 1979, D.C. Law 2-139, § 1903, as added June 10, 1998, D.C. Law 12-124, § 101(u)(3), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Temporary addition of section. — Section 2(b) of D.C. Law 12-47 added a new § 1-620.3 to read as follows:

"§ 1-620.3. Personnel authority pilot programs.

"(a) Notwithstanding any other provision of this title, or any other provision of law or regulation, and consistent with § 1-242, the

Department of Employment Services, the Department of Recreation and Parks, and the Office of Personnel may implement pilot personnel programs in the area of incentive awards as related to performance. Pilot programs may be established during any control period as defined in § 47-3929, to help ensure successful implementation of the transformation of the District of Columbia government workforce.

“(b) The Mayor may issue rules and regulations to implement these programs.”

Section 4(b) of D.C. Law 12-47 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Comprehensive Merit Personnel Act Pilot Program Amendment Act of 1997, whichever occurs first.

Legislative history of Law 12-47. — See note to § 1-612.20.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(u) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XXI. Safety and Health.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-621.1. Policy.

It shall be the policy of the District of Columbia government to establish and maintain a comprehensive occupational safety and health management program that ensures, to the maximum extent possible, a safe and healthful work environment for employees and general public users of District government facilities, and for the protection of District government property. (1973 Ed., § 1-350.1; Mar. 3, 1979, D.C. Law 2-139, § 2001, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.2. Extent of coverage.

The occupational safety and health management program shall encompass all aspects of the total work environment throughout the District government, and shall include, but not be limited to:

- (1) Employee safety and health, inclusive of physical welfare at the work site and environmental control of occupational diseases;
- (2) Fire safety;
- (3) Motor vehicle safety;
- (4) Safety of nonemployee users of city facilities and services;
- (5) Contractor safety; and
- (6) Protection of District government property. (1973 Ed., § 1-350.2; Mar. 3, 1979, D.C. Law 2-139, § 2002, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.3. Minimal standards applicable.

Safe and healthful conditions shall be provided all employees of the District government in accordance with applicable standards, codes, rules and regulations, and shall be consistent with the occupational safety and health standards promulgated by the United States Department of Labor under the provisions of the Occupational Safety and Health Act of 1970, as amended (84 Stat. 1590), and applicable codes, rules and regulations including, but not limited to:

- (1) The D.C. Occupational Safety and Health Board Occupational Safety and Health Standards (11B D.C.R.R.);
- (2) The Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986;
- (3) The Electrical Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986;
- (4) The Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986; and
- (5) The Plumbing Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986. (1973 Ed., § 1-350.3; Mar. 3, 1979, D.C. Law 2-139, § 2003, 25 DCR 5740; Mar. 21, 1987, D.C. Law 6-216, § 13(a), 34 DCR 1072.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-216. — Law 6-216 was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to throughout this section, is D.C. Law 6-216.

The D.C. Occupational Safety and Health Board Occupational Safety and Health Standards (11B D.C.R.R.), referred to in (1), are now found in 29 DCMR, Chapters 30-32.

§ 1-621.4. Authority of Mayor.

(a) The Mayor shall issue rules and regulations consistent with this subchapter and such laws of the federal government and the District of Columbia as they may, from time to time, be amended for the establishment, operation and administration of the District government’s occupational safety and health management program. Programs and procedures developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations.

(b) The Mayor shall ensure, through audits and inspections, compliance with this subchapter and the rules and regulations issued pursuant thereto, and shall direct that appropriate remedial or corrective action be taken when it is determined that noncompliance has occurred. (1973 Ed., § 1-350.4; Mar. 3, 1979, D.C. Law 2-139, § 2004, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.5. Employee rights.

Employees shall be protected against penalty or reprisal for reporting an unsafe or unhealthful working condition or practice, or assisting in the investigation of such condition or practice. (1973 Ed., § 1-350.5; Mar. 3, 1979, D.C. Law 2-139, § 2005, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.6. Training.

The Mayor shall provide for the establishment and supervision of programs, as may be necessary to comply with the provisions of this subchapter, for the education and training of employees in the recognition, avoidance, and prevention of unsafe and unhealthful working conditions and practices. (1973 Ed., § 1-350.6; Mar. 3, 1979, D.C. Law 2-139, § 2006, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.7. Health services.

The Mayor shall establish an employee health services program which shall provide for the following: (1) Treatment of on-the-job injuries and illness requiring emergency treatment; (2) pre-employment and other physical examinations, including fitness-for-duty examinations; (3) a counseling program for “troubled employees”; and (4) preventive programs relating to health. In developing and implementing a health services program consistent with the provisions of this subchapter, maximum use shall be made of existing District government medical and health services facilities, resources and expertise. (1973 Ed., § 1-350.7; Mar. 3, 1979, D.C. Law 2-139, § 2007, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-621.8. Records.

Each agency shall keep adequate records of all occupational accidents and illnesses occurring within the agency for proper evaluation and necessary corrective action and make statistical or other reports as the Mayor may require by rules and regulations. (1973 Ed., § 1-350.8; Mar. 3, 1979, D.C. Law 2-139, § 2008, 25 DCR 5740.)

Emergency act amendments. — For temporary addition of § 1-621.11, see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Legislative Review Emer-

gency Amendment Act of 1998 (D.C. Act 12-294, February 27, 1998, 45 DCR 1762).

Legislative history of Law 2-139. — See note to § 1-601.1.

Testing of District Government Drivers

of Commercial Motor Vehicles for Alcohol and Controlled Substances. — See Mayor's Order 96-139, September 17, 1996 (43 DCR 5287).

Subchapter XXI-A. Testing of Drivers of Commercial Motor Vehicles for the Presence of Alcohol and Controlled Substances.

§ 1-621.51. General.

In compliance with federal regulations issued pursuant to 49 U.S.C. § 31306, the Mayor and each personnel authority shall adopt and administer a program and issue rules for conducting pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up testing of employees who are employed as drivers of commercial motor vehicles, or who are candidates for such employment, for the use of alcohol and controlled substances. (Mar. 3, 1979, D.C. Law 2-139, § 2051, as added June 10, 1998, D.C. Law 12-124, § 101(v), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Temporary addition of subchapter. — Section 2 of D.C. Law 11-204 added this subchapter.

Section 4(b) of D.C. Law 11-204 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Amendment Act of 1996, whichever occurs first.

Section 2 of D.C. Law 12-96 added this subchapter.

Section 4(b) of D.C. Law 12-96 provides that the act shall expire after the 225th day of its having taken effect or on the effective date of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Amendment Act of 1998, whichever occurs first.

Emergency act amendments. — For temporary addition of this section, comprising subchapter XXI-A of Chapter 6 of Title 1, see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-13, March 3, 1997, 44 DCR 1747), § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Emergency Amendment Act of 1997 (D.C. Act 12-248, January 13, 1998, 45 DCR 770), and § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-294, February 27, 1998, 45 DCR 1762).

Section 4 of D.C. Act 12-13 provides for the application of the act.

Section 4 of D.C. Act 12-248 provided for application of the act.

Legislative history of Law 11-204. — Law 11-204, the "Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-774, which was retained by Council. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-372 and transmitted to both Houses of Congress for its review. D.C. Law 11-204 became effective on April 9, 1997.

Legislative history of Law 12-96. — Law 12-96, the "Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-494. The Bill was adopted on first and second readings on December 15, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-270 and transmitted to both Houses of Congress for its review. D.C. Law 12-96 became effective on April 30, 1998.

Legislative history of Law 12-124. — Law 12-124, the "Omnibus Personnel Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both Houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further,

nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XXI-B. Mandatory Drug and Alcohol Testing of Certain Employees of the Department of Human Services and the Commission of Mental Health Services.

§ 1-621.61. Definitions.

For the purposes of this subchapter, the term:

(1) “Applicant” means a person who has filed a written employment application form to work for the Department or the Commission or has been tentatively selected for employment by either the Department or the Commission to work as a high potential risk employee.

(2) “Commission” means the Commission on Mental Health Services.

(3) “Department” means the Department of Human Services.

(4) “High potential risk employee” means any Department or Commission employee who has resident care or custody responsibilities in a secured facility or who works in a residential facility.

(5) “Post-accident employee” means any Department or Commission employee who, while on duty, was involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

(6) “Probable cause” means a reasonable belief by a supervisor that an employee is under the influence of an illegal substance or alcohol such that the employee’s ability to perform his or her job is impaired.

(7) “Probable cause referral” means a referral, based on probable cause, for testing by the Department or the Commission for drug or alcohol use.

(8) “Random testing” means drug or alcohol testing taken by a Department or Commission employee at an unspecified time for the purposes of determining whether any Department or Commission employee has used drugs or alcohol and as a result is unable to satisfactorily perform his or her employment duties.

(9) “Residential facility” means a facility that provides a supervised and sheltered living environment for individuals who need such an environment because of their mental, familial, social, or other circumstances.

(10) “Secured facility” means a hospital or institution that is:

(A) Leased, or owned by the District government;

(B) Operated by the District government; and

(C) Equipped and qualified to provide in-resident or in-patient care to detained or committed youth or persons suffering from mental illness. (Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502.)

Temporary addition of subchapter. — 621.61 through 1-621.65, comprising subchapter XXI-B of Chapter 6 of Title 1.
Section 2 of D.C. Law 12-191 enacted §§ 1-

Section 4(b) of D.C. Law 12-191 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of subchapter, see § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing Emergency Amendment Act of 1998 (D.C. Act 12-430, July 29, 1998, 45 DCR 5727), § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Drug and Alcohol Testing Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-504, October 27, 1998, 45 DCR 8127), and § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-599, January 20, 1998, 46 DCR 1147).

Legislative history of Law 12-191. — Law 12-191, the “Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing

Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-689. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-465 and transmitted to both Houses of Congress for its review. D.C. Law 12-191 became effective on March 26, 1999.

Legislative history of Law 12-227. — Law 12-227, the “Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-625, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998 respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-548 and transmitted to both Houses of Congress for its review. D.C. Law 12-227 became effective on April 13, 1999.

§ 1-621.62. Employee testing.

(a) The following Department and Commission employees and prospective employees shall be tested for drug and alcohol use:

(1) Applicants for positions that would qualify them as high potential risk employees;

(2) Employees who have had a probable cause referral;

(3) Post-accident employees, as soon as reasonably possible after an accident; and

(4) High potential risk employees.

(b) Only high potential risk employees shall be subject to random testing.

(c) All employees of the Department and Commission shall be given written notice, issued at least 30 days before the implementation of a drug and alcohol testing program, that the Department and Commission will implement a drug and alcohol testing program.

(d) No employee may be tested for drug or alcohol use prior to receiving the notice required by subsection (c) of this section.

(e) Conditions giving rise to probable cause must be observed and documented. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a probable cause referral.

(f) An employee shall be given one opportunity to seek treatment following a positive test result.

(g) The Department and the Commission shall procure the services of a contractor to perform the tests required by this subchapter.

(h) All testing conducted by a vendor shall be implemented pursuant to this subchapter. (Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502.)

Temporary addition of subchapter. — See note to § 1-621.61.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-621.61.

Legislative history of Law 12-191. — See note to § 1-621.61.

Legislative history of Law 12-227. — See note to § 1-621.61.

§ 1-621.63. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be certified by the United States Department of Health and Human Services (“HHS”) to perform job related drug and alcohol forensic testing.

(b)(1) For random testing, the contractor shall come on-site to Department or Commission institutions.

(2) The contractor shall collect urine specimens and split the samples.

(c) The contractor shall perform enzyme-multiplied-immunoassay technique (“EMIT”) testing on one sample and store the other sample. Any positive EMIT test shall be confirmed by the contractor using gas chromatography/mass spectrometry (“GCMS”) methodology.

(d) Any Department or Commission employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize the stored sample to be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(e) Probable cause and post-accident testing shall follow the same procedures set forth in subsections (a) through (d) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor’s test site for specimen collection or breathalyzer.

(f) A breathalyzer shall be deemed positive by the Department’s or Commission’s testing contractor if the contractor determines that 1 milliliter of the employee’s breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol. (Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502.)

Temporary addition of subchapter. — See note to § 1-621.61.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-621.61.

Legislative history of Law 12-191. — See note to § 1-621.61.

Legislative history of Law 12-227. — See note to § 1-621.61.

§ 1-621.64. Implied consent of employees who operate motor vehicles.

Any Department or Commission employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the provisions of this subchapter, to the testing of the employee’s urine or breath, for the purpose of determining drug or alcohol content, whenever a supervisor has the probable cause or a police officer arrests such employee for a violation of § 40-716 or has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District while that employee’s breath contained .08% or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the employee’s ability to operate a motor vehicle was impaired by the

consumption of intoxicating liquor. (Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502.)

Temporary addition of subchapter. — See note to § 1-621.61. **Legislative history of Law 12-191.** — See note to § 1-621.61.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-621.61. **Legislative history of Law 12-227.** — See note to § 1-621.61.

§ 1-621.65. Procedure and employee impact.

(a) The drug and alcohol testing policy shall be issued in writing in advance of program implementation to inform employees and allow them the opportunity to seek treatment. An employee shall be allowed only one opportunity to seek treatment following his or her first positive test result. Thereafter, any confirmed positive drug test, or positive breathalyzer test, or a refusal to submit to a drug or breathalyzer test shall be grounds for termination of employment.

(b) The program shall cover all Department and Commission employees, including management, and shall be implemented as a single program of the Department and a single program of the Commission.

(c) The results of any random test conducted pursuant to this subchapter may not be turned over to any law enforcement agency without the employee's written consent. (Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502.)

Temporary addition of subchapter. — See note to § 1-621.61. **Legislative history of Law 12-191.** — See note to § 1-621.61.

Emergency act amendments. — For temporary addition of subchapter, see note to § 1-621.61. **Legislative history of Law 12-227.** — See note to § 1-621.61.

Subchapter XXII. Health Benefits.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-622.1. Federal health benefits.

The health insurance benefit provisions of Chapter 89 of Title 5 of the United States Code are applicable to all employees of the District government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation. Procedures established for administering the health benefits program with the District government shall be consistent with law and civil service rules. (1973 Ed., § 1-351.1; Mar. 3, 1979, D.C. Law 2-139, § 2101, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(c), 34 DCR 5079.)

Section references. — This subchapter is referred to in § 1-2295.5.

This section is referred to in § 35-2301. **Feasibility Study for Federal Employees Health Benefits Program.** — See § 8 of the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114).

Legislative history of Law 2-139. — See note to § 1-601.1. **Cited in American Fed'n of Gov't Employees v. Barry,** App. D.C., 459 A.2d 1045 (1983).

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.2. District health benefits.

The District shall provide health benefits as set forth in § 1-622.5 to all employees of the District first employed after September 30, 1987, except those specifically excluded by law or by rule. (Mar. 3, 1979, D.C. Law 2-139, § 2102, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.11 and 1-622.15.

Legislative history of Law 7-27. — Law 7-27 was introduced in Council and assigned Bill No. 7-228, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 17, 1987, it was assigned Act No. 7-49 and transmitted to both Houses of Congress for its review.

Health Care Benefits Expansion. — See § 36-1401 et seq.

§ 1-622.3. Definitions.

For the purposes of §§ 1-622.4 through 1-622.13, the term:

(1) “Annuitant” means:

(A) An employee first employed by the District after September 30, 1987, who has subsequently retired pursuant to any of the following:

- (i) Teachers’ Retirement System (D.C. Code §§ 31-1201 to 31-1252);
- (ii) Police and Fire Retirement System (D.C. Code §§ 4-607 to 4-630);
- (iii) Judges’ Retirement System (D.C. Code §§ 11-1561 to 11-1571); or
- (iv) Teachers’ Insurance and Annuity Association programs; or

(B) An employee first employed by the District after September 30, 1987, who has subsequently separated pursuant to the District Retirement Benefit Program (D.C. Code §§ 1-627.3 to 1-627.14) after any of the following:

- (i) Reaching 57 years of age and having completed 25 years of creditable District service in a law enforcement position;
- (ii) Becoming entitled to retirement benefits under the Social Security Act; or
- (iii) Becoming entitled to disability benefits under the Social Security Act.

(2) “Carrier” means a voluntary association, corporation, partnership, or other nongovernmental organization that is lawfully engaged in providing, paying for, or reimbursing the cost of health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the organization.

(3) “Dependent child” includes:

- (A) An adopted child; and
- (B) A stepchild, foster child, or natural child of an employee or annuitant.

(4) “Employee” means an individual first employed by the District after September 30, 1987.

(5) “Health benefit plan” means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of

providing, paying for, or reimbursing expenses for health services under § 1-622.5.

(6) “Member of family” means:

(A) The spouse of an employee or annuitant;

(B) An unmarried dependent child under 22 years of age;

(C) An unmarried dependent child under 25 years of age who is a full-time student; and

(D) An unmarried child regardless of age who is incapable of self-support because of mental or physical disability that existed before age 22. (Mar. 3, 1979, D.C. Law 2-139, § 2103, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-66, § 2(a), 45 DCR 343.)

Section references. — This section is referred to in § 1-622.15.

Effect of amendments. — D.C. Law 12-66 rewrote (1).

Temporary amendment of section. — D.C. Law 11-183 rewrote (1).

Section 3(b) of D.C. Law 11-183 provides that the act shall expire on the 225th day of having taken effect or upon the effective date of the Comprehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Comprehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-27, March 11, 1997, 44 DCR 1892), and § 2(a) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-213, December 5, 1997, 44 DCR 7615).

Section 3 of D.C. Act 12-27 provides for the application of the act.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 11-183. — Law 11-183, the “Comprehensive Merit Personnel Act Health and Life Insurance Clarification Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-712, which was retained by the Council. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-334 and transmitted to both Houses of Congress for its review. D.C. Law 11-183 became effective on April 9, 1997.

Legislative history of Law 12-66. — Law 12-66, the “Comprehensive Merit Personnel Act Health and Life Insurance Clarification Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-229, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 21, 1997, it was assigned Act No. 12-205 and transmitted to both Houses of Congress for its review. D.C. Law 12-66 became effective on March 20, 1998.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 1-622.4. Contracting authority.

The Mayor may contract with qualified carriers to provide health benefits under the laws of the District for periods of time to be determined by the Mayor. Any contract under this section shall be in accordance with the provisions of Chapter 11A of this title. (Mar. 3, 1979, D.C. Law 2-139, § 2104, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.12, and 1-622.15.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.5. Health benefit plans.

The District may contract for or approve the following health benefit plans:

(1) An Indemnity Benefit Plan: One District-wide plan offering at least 3 levels of benefits (one of which shall be deemed by the Mayor to be a standard option) under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for health benefits.

(2) Health Maintenance Organization Plans including:

(A) One or more group prepayment plans that offer health benefits, in whole or in substantial part on a prepaid basis, with professional services provided by physicians representing at least 3 major medical specialties practicing as a group in a common center or centers who receive all or a substantial part of their professional income from the prepaid funds; and

(B) An individual practice prepayment plan that offers health benefits in whole or substantial part on a prepaid basis, with professional services provided by individual physicians who agree, under rules promulgated by the Mayor, to accept the payments provided by the plan as full payment for covered services that include in-hospital services, general care provided in their offices and in the patients' homes, out-of-hospital diagnostic procedures, and preventive care.

(3) Preferred Provider Organization Plan: An individual practice plan that offers health benefits in whole or substantial part with professional services provided by individual physicians, hospitals, and other health care providers who agree under rules promulgated by the Mayor to accept contractually reduced payments for the covered services they provide.

(4) Combined Benefit Plan: A plan that includes elements of more than 1 of the plans described in paragraphs (1), (2), and (3) of this section.

(5) Other Health Benefit Plans: Nothing in this section shall preclude the Mayor from contracting for or approving a type of health benefit plan not specifically listed in this section. (Mar. 3, 1979, D.C. Law 2-139, § 2105, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(b), 37 DCR 6721.)

Section references. — This section is referred to in §§ 1-622.2, 1-622.3, 1-622.6, 1-622.7, 1-622.12, 1-622.13, 1-622.15, 1-3004, and 36-1406.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 8-190. — See note to § 1-622.14.

Mayor authorized to enter agreements to modify health benefits contracts. — See note to § 1-612.3.

§ 1-622.6. Types of benefits.

(a) The benefits provided under the health benefit plans shall include benefits for costs associated with care in a general hospital and for health services of a catastrophic nature and may include at a minimum the following benefits:

- (1) Hospital benefits;
- (2) Managed care;
- (3) Office visits;
- (4) Substance abuse;

- (5) Well baby care;
- (6) Prescription drugs;
- (7) Obstetrical benefits;
- (8) Mental health benefits; and
- (9) Hospice care.

(b) Each contract issued under § 1-622.5 shall comply with the provisions of Chapter 23 of Title 35. (Mar. 3, 1979, D.C. Law 2-139, § 2106, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, 1-3004, and 36-1406. **Legislative history of Law 7-27.** — See note to § 1-622.2.

§ 1-622.7. Election of coverage.

(a) Unless an employee or annuitant affirmatively waives health insurance coverage, each employee or annuitant shall enroll in 1 of the approved health benefit plans under § 1-622.5 either as an individual or for self and family or provide evidence satisfactory to the Mayor that the employee or annuitant is covered under another health benefit plan.

(b) If an employee or annuitant has a spouse who is an employee or annuitant, either spouse but not both may enroll for self and family, or each spouse may enroll as an individual. An individual shall not be enrolled as an employee or annuitant and also as a member of a family.

(c) An employee or an annuitant enrolled in a health benefit plan may change coverage by an application filed within 60 days of a change in family status or as otherwise permitted by rule promulgated by the Mayor.

(d) An employee or annuitant may transfer enrollment from one health benefit plan to another health benefit plan under § 1-622.5 as permitted by rules promulgated by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 2107, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, 1-3004, and 36-1406. **Legislative history of Law 7-27.** — See note to § 1-622.2.

§ 1-622.8. Employee deductions and withholdings.

(a) During each pay period in which an employee or an annuitant is enrolled under 1 of the health benefit plans there shall be withheld from the compensation of each employee and from the annuity of each annuitant or there shall be paid by each annuitant who received his or her benefits as a lump sum payment an amount equal to the cost of the selected health benefit plan less the amount of the District contribution for the employee or the annuitant. The amount withheld or paid by the employee or the annuitant, together with the District's contribution, shall be transferred to the carrier of the health benefit plan selected by the employee or the annuitant.

(b) During each pay period in which an individual receiving disability compensation benefits pursuant to subchapter XXIV of this chapter is enrolled under 1 of the health benefit plans, there shall be withheld from those benefits

an amount equal to the cost of the selected health benefit plan less the amount of the District contribution for the enrolled individual. The amount withheld from the employee or the annuitant, together with the District's contribution, shall be transferred to the carrier of the health benefit plan selected by the individual receiving disability benefits. (Mar. 3, 1979, D.C. Laws 2-139, § 2108, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.9. District contribution.

(a) The District's contribution to the cost of any health benefit plan shall be an amount equal to 75% of the subscription charge of the standard option indemnity plan, except that in no event shall the District's contribution exceed 75% of the total subscription charge of any plan or option in which the employee is enrolled. The District's contribution shall be paid on a regular pay period basis.

(b) The Mayor shall determine the amount of the District contribution for individual and for self and family enrollments before the beginning date of each contract period. (Mar. 3, 1979, D.C. Law 2-139, § 2109, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(c), 37 DCR 6721.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Temporary amendment of section. — Section 2(a) of D.C. Law 12-278 added (c) and (d) to read as follows:

"(c) There is established the Annuitants' Health and Life Insurance Employer Contribution Trust Fund ("Fund") from which the District's contribution for health and life insurance for annuitants shall be paid. The monies in the Fund shall not be a part of, or lapse into, the General Fund of the District or any other fund of the District.

"(d) The Mayor shall deposit into the Fund the \$750,000, that was appropriated in fiscal years 1997, 1998 and 1999 for the purpose of funding the District's contribution for the health and life insurance premiums of annuitants. The Mayor may also deposit into the Fund any balances in the rate stabilization fund reserves that are refunded to the District by a health insurance carrier."

Section 4(b) of D.C. Law 12-278 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Annuitants' Health and Life Insurance Employer Contribution Emergency Amendment Act of 1998 (D.C. Act 12-617, January 22, 1999, 46 DCR 1335).

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 8-190. — See note to § 1-622.14.

Legislative history of Law 12-278. — Law 12-278, the "Annuitants' Health and Life Insurance Employer Contribution Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 12-887. The Bill was adopted on first and second readings on December 15, 1998, and January 5, 1999, respectively. Signed by the Mayor on February 3, 1999, it was assigned Act No. 12-631 and transmitted to both Houses of Congress for its review. D.C. Law 12-278 became effective on April 27, 1999.

Mayor authorized to enter agreements to modify health benefits contracts. — See note to § 1-612.3.

§ 1-622.10. Information to employees.

(a) The Mayor shall make available to each employee information as may be necessary to enable the employee to exercise an informed choice among the types of health benefit plans offered.

(b) The Mayor shall make available to each employee and annuitant enrolled in a health benefit plan a written statement or summary of:

(1) The services or benefits, including maximums, limitations, and exclusions, to which the employee, annuitant, or member of the family of the employee or annuitant are entitled;

(2) The procedures for obtaining benefits; and

(3) The principal provisions of the health benefit plan affecting the employee, annuitant, or member of the family of the employee or annuitant. (Mar. 3, 1979, D.C. Law 2-139, § 2110, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.11. Coverage of restored employees.

An employee enrolled in a health benefit plan under § 1-622.2 who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unwarranted or unjustified may, at the employee's option, enroll as a new employee or have the employee's coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place. (Mar. 3, 1979, D.C. Law 2-139, § 2111, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.12. Evaluations; reports; audits.

(a) The Mayor shall make periodic evaluations of the operation and administration of the health benefit plans provided under § 1-622.5.

(b) Each contract entered into under § 1-622.4 shall require the carrier to:

(1) Furnish reasonable reports as the Mayor determines necessary to enable the District to carry out its functions under this subchapter; and

(2) Permit the Mayor to examine records of the carriers as may be necessary to carry out the purposes of this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 2112, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.13. Rules; eligibility.

(a) In order to ensure proper implementation of the health benefit plans under § 1-622.5 by October 1, 1987, the Mayor may issue temporary rules regarding the health benefit plans that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules submitted pursuant to subsection (a) of this section shall prescribe the time, manner, and conditions under which employees and annuitants are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, or employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of the hazardous nature of employment. (Mar. 3, 1979, D.C. Law 2-139, § 2113, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.3, 1-622.15, and 1-3004.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-622.14. Continued health benefits coverage.

A District government employee who is separated from service, or an employee's dependent who ceases to be a dependent, may be eligible for extended health benefit coverage in accordance with rules issued by the Mayor. The rules shall be as consistent as possible with federal regulations governing extended health benefits for District government employees enrolled in the Federal Employee Health Benefits Plan. (Mar. 3, 1979, D.C. Law 2-139, § 2114, as added Mar. 2, 1991, D.C. Law 8-190, § 2(d), 37 DCR 6721.)

Section references. — This section is referred to in § 36-1402.

Legislative history of Law 8-190. — Law 8-190 was introduced in Council and assigned Bill No. 8-586, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 17, 1990, it was assigned Act No. 8-253 and trans-

mitted to both Houses of Congress for its review.

References in text. — The "Federal Employee Health Benefits Plan", referred to in the second sentence, is treated in 5 U.S.C., Chapter 89.

Mayor authorized to enter agreements to modify health benefits contracts. — See note to § 1-612.3.

§ 1-622.15. Reimbursement of excess premium costs.

Expired.

(Mar. 3, 1979, D.C. Law 2-139, § 2115, as added Mar. 2, 1991, D.C. Law 8-196, § 2, 37 DCR 6735.)

Expiration of Law 8-196. — Section 3(b) of D.C. Law 8-196, as amended by § 2 of D.C. Law 10-133 and § 2 of D.C. Law 10-213, provided

that the act shall expire 6 years after its having taken effect.

Section 1-622.15 expired on March 3, 1997.

Subchapter XXIII. Life Insurance; Benefit Program Study.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-623.1. Federal life insurance benefits.

The life insurance benefits provisions of Chapter 87 of Title 5 of the United States Code shall apply to all employees of the District government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation. Procedures established for administering the life insurance benefits program within the District government shall be consistent with law and civil services rules. (1973 Ed., § 1-352.1; Mar. 3, 1979, D.C. Law 2-139, § 2201, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(e), DCR 5079.)

Section references. — This subchapter is referred to in §§ 1-611.63 and 1-2295.5.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-623.2. Benefit program study.

Within 18 months after March 3, 1979, the Mayor shall transmit a study to the Council concerning development of a program of disability income protection to be made available to employees through collective bargaining and a program of low cost legal services for employees. (1973 Ed., § 1-352.2; Mar. 3, 1979, D.C. Law 2-139, § 2202, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-623.3. District life insurance benefits.

The District shall provide the group life insurance benefits set forth in § 1-623.7 to all employees of the District first employed after September 30, 1987, except those specifically excluded by law or by rule. (Mar. 3, 1979, D.C. Law 2-139, § 2203, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-611.63.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.4. Definitions.

For the purposes of §§ 1-623.5 through 1-623.14, the term:

(1) "Annuitant" means:

(A) An employee first employed by the District after September 30, 1987, who has subsequently retired pursuant to any of the following:

- (i) Teachers' Retirement System (D.C. Code §§ 31-1201 to 31-1252);
- (ii) Police and Fire Retirement System (D.C. Code §§ 4-607 to 4-630);
- (iii) Judges' Retirement System (D.C. Code §§ 11-1561 to 11-1571); or
- (iv) Teachers' Insurance and Annuity Association programs; or

(B) An employee first employed by the District after September 30, 1987, who has subsequently separated pursuant to the District Retirement Benefit Program (D.C. Code §§ 1-627.3 to 1-627.14) after any of the following:

- (i) Reaching 57 years of age and having completed 25 years of creditable District service in a law enforcement position;
- (ii) Becoming entitled to retirement benefits under the Social Security Act; or
- (iii) Becoming entitled to disability benefits under the Social Security Act.

(2) "Dependent child" includes:

- (A) An adopted child; and
- (B) A stepchild, foster child, or natural child of an employee or annuitant.

(3) "Employee" means an individual first employed by the District after September 30, 1987.

(4) "Member of family" means:

- (A) The spouse of an employee or annuitant;
- (B) An unmarried dependent child under 22 years of age;
- (C) An unmarried dependent child under 25 years of age who is a full-time student; and

(D) An unmarried child regardless of age who is incapable of self-support because of mental or physical disability that existed before age 22.

(5) "Viatical settlement" means an irrevocable assignment of all an employee's or former employee's incidents of ownership in a life insurance policy. (Mar. 3, 1979, D.C. Law 2-139, § 2204, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-65, § 2(a), 44 DCR 7608; Mar. 20, 1998, D.C. Law 12-66, § 2(b), 45 DCR 343.)

Effect of amendments. — D.C. Law 12-65 added (5).

D.C. Law 12-66 rewrote (1).

Temporary amendments of section. — D.C. Law 11-183 rewrote (1).

Section 3(b) of D.C. Law 11-183 provides that the act shall expire on the 225th day of having taken effect or upon the effective date of the Comprehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Amendment Act of 1996, whichever occurs first.

D.C. Law 11-188 added (5).

Section 3(b) of D.C. Law 11-188 provides that the act shall expire after 225 days of its having taken effect or upon the effective date of the District of Columbia Viatical Settlement Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Comprehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-27, March 11, 1997, 44 DCR 1892), and § 2(b) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Legislative Review Emergency

Amendment Act of 1997 (D.C. Act 12-213, December 5, 1997, 44 DCR 7615).

Section 3 of D.C. Act 12-27 provides for the application of the act.

For temporary amendment of section, see § 2(a) of the District of Columbia Employee Viatical Settlement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-26, March 11, 1997, 44 DCR 1890), and see § 2(a) of the Employee Viatical Settlement Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-212, December 5, 1997, 44 DCR 7613).

Section 3 of D.C. Act 12-26 provides for the application of the act.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 11-183. — See note to § 1-622.3.

Legislative history of Law 11-188. — Law 11-188, the "District of Columbia Employee Viatical Settlement Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-715, which was referred to the Committee by the Council. The Bill was adopted on first and second readings on June 4,

1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-341 and transmitted to both Houses of Congress for its review. D.C. Law 11-188 became effective April 9, 1997.

Legislative history of Law 12-65. — Law 12-65, the “Comprehensive Merit Personnel Employee Viatical Settlement Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-228, which was referred to

the Committee on Government Operations. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 21, 1997, it was assigned Act No. 12-204 and transmitted to both Houses of Congress for its review. D.C. Law 12-65 became effective on March 20, 1998.

Legislative history of Law 12-66. — See note to § 1-622.3.

§ 1-623.5. Contracting authority.

(a) The Mayor may purchase from 1 or more life insurance companies a policy or policies of group life insurance to provide the benefits set forth in § 1-623.7 from a life insurance company licensed to provide life and accidental death and dismemberment insurance under the laws of the District. Any contract under this section shall be in accordance with Chapter 11A of this title.

(b) The Mayor may discontinue at any time a policy purchased from a company under subsection (a) of this section. (Mar. 3, 1979, D.C. Law 2-139, § 2205, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-623.4, 1-623.6, 1-623.7, 1-623.9, 1-623.10, 1-623.11, 1-623.12, 1-623.13, and 1-623.14.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.6. Automatic coverage; description of benefits.

(a) Except as provided in subsection (b) of this section, an employee is automatically insured on the date the employee becomes eligible for insurance. Each policy purchased by the Mayor under § 1-623.5 shall provide for this automatic coverage.

(b) An employee who does not wish to be insured shall give written notice to the employee’s employing office or such other office designated by the Mayor on a form prescribed by the Mayor. If notice is received before the employee becomes insured, then the employee shall not be insured. If notice is received after the employee has become insured, the insurance will end at the end of the pay period in which the notice was received.

(c) The Mayor shall make available to each insured employee or annuitant a written statement or summary of:

- (1) The benefits to which the employee, annuitant, or member of the family of the employee or annuitant are entitled;
- (2) The procedures for obtaining benefits; and
- (3) The principal provisions of the policy in effect. (Mar. 3, 1979, D.C. Law 2-139, § 2206, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-623.4.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.7. Group insurance; amounts.

(a) The group life insurance amounts purchased by the District under § 1-623.5 shall be no less than the insurance amounts provided under the Federal Employees Group Life Insurance ("F.E.G.L.I.") plan pursuant to 5 U.S.C. § 8702, in effect as of October 1, 1987.

(b) Employees shall be offered the option of purchasing additional coverage for themselves, and for their spouses and dependent children, and the cost of the additional coverage shall be borne solely by the employees purchasing that coverage, except Executive Service employees. (Mar. 3, 1979, D.C. Law 2-139, § 2207, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; June 10, 1998, D.C. Law 12-124, § 101(w)(1), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-623.3, 1-623.4, and 1-623.5.

Effect of amendments. — D.C. Law 12-124, in (b), added "except Executive Service employees" at the end.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(w) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Editor's notes. — For actual amounts under the Federal Employees Group Life Insurance plan referred to in (a), see 5 U.S.C. § 8704.

§ 1-623.8. Death claims; order of precedence; viatical settlements.

(a) Except as provided in subsection (a-1) of this section, the amount of group life insurance in force for an employee or annuitant at the date of the employee or annuitant death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of the death of the employee or annuitant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the employee or annuitant in a signed and witnessed writing executed and filed before death;

(2) If there is no designated beneficiary, to the widow or widower of the employee or annuitant;

(3) If none of the above, to the child or children of the employee or annuitant and descendants of a deceased child or children by representation;

(4) If none of the above, to the parents or parent of the employee or annuitant;

(5) If none of the above, to the duly appointed personal representative of the estate of the employee or annuitant; or

(6) If none of the above, to the other next of kin of the employee or annuitant under the laws of the domicile of the employee or annuitant at the date of death.

(a-1)(1) Except as provided in paragraph (2) of this subsection, pursuant to rules and regulations prescribed by the Mayor, each policy purchased pursuant to § 1-623.5 shall provide that an insured employee or former employee who is terminally ill may make a viatical settlement, which is an irrevocable assignment of all of the employee's or former employee's incidents of ownership in the policy. The assignment shall automatically cancel any designation of

beneficiary the insured person might have made, and the insured person shall no longer have the right to designate a beneficiary. The assignee shall assume the right to convert the insurance when the insured employee's employment circumstances would have provided this option to the insured employee.

(2) The assignment shall exclude accidental dismemberment insurance and family optional insurance.

(b) If no claim has been filed by any of the persons set forth in subsection (a) of this section or an assignee pursuant to subsection (a-1) of this section within 4 years of the date of death of an employee or annuitant, then the funds shall be deposited into the General Fund of the District of Columbia to be kept for safekeeping and disbursed in accordance with Chapter 2 of Title 42. (Mar. 3, 1979, D.C. Law 2-139, § 2208, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-65, § 2(b), 44 DCR 7608.)

Section references. — This section is referred to in § 1-623.4.

Effect of amendments. — D.C. Law 12-65 added "viatical settlements" to the section heading, in (a), added "Except as provided in subsection (a-1) of this section" at the beginning of the introductory paragraph; inserted (a-1); and in (b), inserted "or an assignee pursuant to subsection (a-1) of this section."

Temporary amendment of section. — D.C. Law 11-188 added "viatical settlements" to the section heading; added the exception at the beginning of the introductory paragraph of (a); inserted (a-1); and inserted "or an assignee pursuant to subsection (a-1) of this section" in (b).

Section 3(b) of D.C. Law 11-188 provides that the act shall expire after 225 days of its having taken effect or upon the effective date of the District of Columbia Viatical Settlement Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the District of Columbia Employee Viatical Settlement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-26, March 11, 1997, 44 DCR 1890), and § 2(b) of the Employee Viatical Settlement Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-212, December 5, 1997, 44 DCR 7613).

Section 3 of D.C. Act 12-26 provides for the application of the act.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 11-188. — See note to § 1-623.4.

Legislative history of Law 12-65. — See note to § 1-623.4.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 1-623.9. Termination of insurance.

(a) A policy purchased under § 1-623.5 shall contain a provision, approved by the Mayor, providing that insurance on an employee ends 1 month after separation from the District or after discontinuance of pay, with provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Mayor.

(b) An employee in a group life insurance plan under § 1-623.5 who is removed or suspended without pay and later reinstated or restored to duty on the grounds that the removal or suspension was unwarranted or unjustified may, at the employee's option, enroll as a new employee or have the employee's coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place. (Mar. 3, 1979, D.C. Law 2-139, § 2209, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-623.4.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.10. Employee deductions; withholdings; payments.

(a) During each pay period in which the employee or annuitant is insured under a policy of insurance purchased by the District under § 1-623.5, an amount determined by the Mayor shall be withheld from the compensation of the employee or the annuity of the annuitant as his or her share of the cost of the group life insurance benefits purchased under § 1-623.5. The amount withheld from an employee or annuitant paid on other than a biweekly basis shall be determined at a proportional rate adjusted to the nearest cent.

(b) During each pay period in which an employee receiving disability compensation benefits pursuant to subchapter XXIV of this chapter is insured under a policy of group life insurance purchased by the District under § 1-623.5, an amount determined by the Mayor shall be withheld from the disability compensation benefits of the individual as his or her share of the cost of the group insurance.

(c) There shall be paid by each annuitant who received his or her benefits as a lump sum payment an amount equal to the cost of the life insurance plan less the amount of the District contribution to the life insurance plan for the annuitant. (Mar. 3, 1979, D.C. Law 2-139, § 2210, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; May 10, 1989, D.C. Law 7-231, § 3(2), 36 DCR 492.)

Section references. — This section is referred to in §§ 1-623.4 and 1-623.11.

Legislative history of Law 7-231. — See note to § 1-612.11.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.11. District contributions.

For each pay period in which an employee or annuitant is insured under a policy of insurance purchased under § 1-623.5, a sum computed at a rate determined by the Mayor shall be contributed from the appropriation or fund that is used to pay the employee or annuitant to the carrier of the plan that the employee or annuitant has selected. This sum shall not exceed one-half the amount that is withheld from the compensation of the employee or annuitant under § 1-623.10 for basic life insurance coverage. (Mar. 3, 1979, D.C. Law 2-139, § 2211, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-623.4.

Temporary amendment of section. — Section 2(b) of D.C. Law 12-278 added (b) to read as follows:

“(b) The District’s contribution for annuitants shall be paid from the trust fund established in § 1-622.9.”

Section 4(b) of D.C. Law 12-278 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Annuitants’ Health and Life Insurance Employer Contribution Emergency Amendment Act of 1998 (D.C. Act 12-617, January 22, 1999, 46 DCR 1335).

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 12-278. — See note to § 1-622.9.

§ 1-623.12. Annual accounting; reports.

(a) Each policy purchased by the District under § 1-623.5 shall provide for an accounting by the company from which the insurance was purchased to the Mayor not later than 90 days after the end of each policy year. The accounting shall set forth, in form approved by the Mayor:

(1) The amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) The total of all mortality and other claim charges incurred for that period; and

(3) The amounts of the company's expenses and risk charges incurred for that period.

(b) Each contract entered into under § 1-623.5 shall require the company to:

(1) Furnish reasonable reports as the Mayor determines to be necessary to enable the District to carry out its functions under this subchapter; and

(2) Permit the Mayor to examine records of the company as may be necessary to carry out the purposes of this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 2212, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-623.4 and 1-623.13.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.13. Special contingency reserve.

(a) An excess of the total of § 1-623.12(a)(1) over the sum of § 1-623.12(a)(2) and (a)(3) shall be held by the company issuing the policy as a special contingency reserve to be used by the company only for charges under the policy purchased under § 1-623.5.

(b) The special contingency reserve shall bear interest at a rate determined in advance of each policy period by the company from which the insurance was purchased under § 1-623.5 and approved by the Mayor as being consistent with the rates generally used by the company from which the insurance was purchased under § 1-623.5 for similar funds held under other group life insurance policies.

(c) When the Mayor determines that the amount of the special contingency reserve is sufficient to provide for adverse fluctuations in future charges under the policy, any funds in excess of that amount may be used to increase benefits, to reduce premiums, or both, or may be deposited in the General Fund of the District.

(d) When a policy purchased under § 1-623.5 is discontinued, any balance remaining in the special contingency reserve after all charges have been paid shall be deposited in the General Fund of the District.

(e) When a policy purchased pursuant to § 1-623.5 is replaced by a successor policy, either by a new policy under a contract with the same life insurance company or by a policy under a new contract with another life

insurance company, any balance remaining in the special contingency reserve shall be transferred to the special contingency reserve for the new policy. (Mar. 3, 1979, D.C. Law 2-139, § 2213, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Apr. 29, 1998, D.C. Law 12-89, § 2, 45 DCR 1306.)

Section references. — This section is referred to in § 1-623.4.

Effect of amendments. — Section 2 of D.C. Law 12-89 added (e).

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 12-89. — Law 12-89, the “Life Insurance Special Contingency Reserve Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-162, which was referred to the Committee on Gov-

ernment Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-262 and transmitted to both Houses of Congress for its review. D.C. Law 12-89 became effective on April 29, 1998.

Application of Law 12-89. — Section 4 of D.C. Law 12-89 provided that the provisions of § 2 of the act shall apply as of May 30, 1995.

§ 1-623.14. Rules; eligibility.

(a) In order to ensure proper implementation of the group life insurance under § 1-623.5 by October 1, 1987, the Mayor may issue temporary rules regarding the group life insurance that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules shall prescribe the time, manner, and conditions under which employees are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, and employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of the hazardous nature of employment. (Mar. 3, 1979, D.C. Law 2-139, § 2214, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-623.4.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-623.15. Disability income protection.

The Mayor shall establish a disability income program to include short- and long-term disability insurance which shall provide coverage for non-job-related injuries and illnesses. (Mar. 3, 1979, D.C. Law 2-139, § 2215, as added June 10, 1998, D.C. Law 12-124, § 101(w)(2), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101 of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XXIV. Disability Compensation.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-624.1. Definitions.

For the purpose of §§ 1-624.1 through 1-624.45:

(1) The term “employee” means:

(A) A civil officer or employee in any branch of the District of Columbia government, including an officer or employee of an instrumentality wholly owned by the District of Columbia government;

(B) An individual rendering personal service to the District of Columbia government similar to the service of a civil officer or employee of the District of Columbia, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual, but does not include a member of the Metropolitan Police Department or the Fire Department of the District of Columbia who is pensioned or pensionable under §§ 4-607 through 4-630; and

(C) An individual selected pursuant to Chapter 121 of Title 28 of the United States Code and serving as a petit or grand juror and who is otherwise an employee for the purposes of this subchapter as defined by subparagraphs (A) and (B) of this paragraph.

(2) The term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to rules and regulations issued by the Mayor.

(3) The term “medical, surgical, and hospital services and supplies” includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners, and hospitals within the scope of their practice as defined by District or state law and as designated by the Mayor to provide services to injured employees. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine, to correct a subluxation as demonstrated by X-ray to exist, and subject to rules and regulations issued by the Mayor.

(4) The term “monthly pay” means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the District, whichever is greater, except when otherwise determined under § 1-624.13 with respect to any period.

(5) The term “injury” includes, in addition to injury by accident, a disease proximately caused by the employment and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except, that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(6) The term “widow” means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion.

(7) The term “parent” includes stepparents and parents by adoption.

(8) The terms “brother” and “sister” mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers or married sisters.

(9) The term “child” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children and posthumous children, but does not include married children.

(10) The term “grandchild” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support.

(11) The term “widower” means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion.

(12) The term “compensation” includes the money allowance payable to an employee or his or her dependents and any other benefits paid for from the Employees’ Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death.

(13) The term “student” means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(A) A school, college, or university operated or directly supported by the United States, by the District, by a state or local government, or political subdivision thereof;

(B) A school, college, or university which has been accredited by the District, by a state, by a state-recognized or nationally-recognized accrediting agency or body;

(C) A school, college, or university not so accredited, but whose credits are accepted on transfer by at least 3 institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(D) An additional type of educational or training institution as defined by the Mayor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he or she shows, to the satisfaction of the Mayor, that he or she has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Mayor, he or she is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(14) Repealed.

(15) Repealed.

(16) The term “organ” means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back.

(17) “Utilization review” means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards.

(18)(A) The term “managed care organization” means an organization of physicians and allied health professionals organized to and capable of providing systematic and comprehensive medical care and treatment of injured employees which is designated by the Mayor to provide such care and treatment under this subchapter.

(B) The term “allied health professional” means a medical care provider (including a nurse, physical therapist, laboratory technician, X-ray technician, social worker, or other provider who provides such care within the scope of practice under applicable law) who is employed by or affiliated with a managed care organization.

(19) The term “claimant” means a person who has applied for benefits under this subchapter.

(20) The term “Director” means the Director, Department of Employment Services. (1973 Ed., § 1-353.1; Mar. 3, 1979, D.C. Law 2-139, § 2301, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(a), 37 DCR 6890; Sept. 26, 1995, D.C. Law 11-52, § 810(a), 42 DCR 3684; Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(c)(4); Mar. 26, 1999, D.C. Law 12-175, § 2102(a), 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-624.10, 1-624.18, 1-624.33, and 3-205.19k.

Effect of amendments. — Section 150(c)(4) of Pub. L. 105-100, 111 Stat. 2181, in the first sentence of (3), added “and as designated by the

Mayor to provide services to injured employees”; and added (18).

D.C. Law 12-175 added (19) and (20).

Emergency act amendments. — For temporary amendment of section, see § 1702(a) of the Fiscal Year 1999 Budget Support Emer-

agency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-198. — Law 8-198 was introduced in Council and assigned Bill No. 8-74, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 24, 1990, it was assigned Act No. 8-261 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — See note to § 1-603.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Mayor authorized to issue rules. — Section 4 of D.C. Law 8-198 provided that “(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council

recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

“(b) The proposed rules shall include standards for:

“(1) A coding system for medical reports and bills; and

“(2) The implementation of utilization review.”

Application of § 150(c) of Pub. L. 105-100. — Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

Constitutionality. — The rules regulating attorney’s fees for contested workers’ compensation claims arising under this subchapter do not violate due process. *Cornelious v. District of Columbia Employees’ Comp. Appeals Bd.*, App. D.C., 704 A.2d 853 (1997).

“Injury” construed. — Infliction of “humiliation,” “embarrassment,” “public ridicule,” and “personal indignity” do not amount to an “injury” under this section. *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986).

Claims of injuries caused by intentional torts committed by a co-worker raise at least a substantial question whether they involve an injury covered by the Comprehensive Merit Personnel Act. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Cited in *Jackson v. District of Columbia Employees’ Comp. Appeals Bd.*, App. D.C., 537 A.2d 576 (1988); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989).

§ 1-624.2. Compensation for disability or death of employee.

The District of Columbia government shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty, unless the injury or death is:

- (1) Caused by willful misconduct of the employee;
- (2) Caused by the employee’s intention to bring about the injury or death of himself or herself or of another; or
- (3) Proximately caused by the intoxication of the injured employee. (1973 Ed., § 1-353.2; Mar. 3, 1979, D.C. Law 2-139, § 2302, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Reduction of policy limit. — An insurance carrier could draft a contract which provided for a reduction of the policy limit by any amount received in compensation for the injuries inflicted by an uninsured motorist, including worker's compensation. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983); *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989); *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

§ 1-624.3. Medical services and initial medical and other benefits.

(a) The District government shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, who is approved by the Mayor or his or her designee pursuant to subsection (d) of this section, which the Mayor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished:

- (1) Whether or not disability has arisen;
- (2) Notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of Chapter 83 of Title 5 of the United States Code, or another retirement system for employees of the District or federal government; and
- (3) By or on the order of the District of Columbia government medical officers and hospitals, or by or on the order of a physician or managed care organization designated or approved by the Mayor.

The employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such rules and regulations and instructions as the Mayor considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Mayor, shall be paid from the Employees' Compensation Fund.

(b) The Mayor, under such limitations or conditions as he or she considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Mayor may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury accepted by the employing agency as properly compensable under this subchapter. The Mayor shall prescribe the form and content of the certificate.

- (c) Repealed.
- (d)(1) An employee to whom services, appliances, or supplies are furnished pursuant to subsection (a) of this section shall be provided with such services, appliances, and supplies (including reasonable transportation incident thereto) by a managed care organization or other health care provider

designated by the Mayor or his or her designee, in accordance with such rules, regulations, and instructions as the Mayor considers appropriate. Any health care provider who is a member of such managed care organization shall apply in writing to the Mayor or his or her designee, and be approved by the Mayor or his or her designee prior to providing any services, appliances, or supplies pursuant to this section.

(2) Any expenses incurred as a result of furnishing services, appliances, or supplies which are authorized by the Mayor under paragraph (1) of this section shall be paid from the Employees' Compensation Fund.

(3) Any medical service provided pursuant to this subsection shall be subject to utilization review under § 1-624.23. (1973 Ed., § 1-353.3; Mar. 3, 1979, D.C. Law 2-139, § 2303, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(b), 37 DCR 6890; Sept. 26, 1995, D.C. Law 11-52, § 810(b), 42 DCR 3684; Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, §§ 150(c)(1), (2); Mar. 26, 1999, D.C. Law 12-175, § 2102(b), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(d), 46 DCR 2118.)

Cross references. — As to right to reimbursement for health care assistance, see § 3-509.

Section references. — This section is referred to in §§ 1-624.1 and 1-624.17.

Effect of amendments. — Section 150(c) of Pub. L. 105-100, 111 Stat. 2181, rewrote (a)(3); and added (d).

D.C. Law 12-175 inserted "approved by the Mayor or his or her designee pursuant to subsection (d) of this section" in (a); and, in (d)(1), inserted "or his or her designee" following the first use of "Mayor," and added the second sentence.

D.C. Law 12-264 attempted to redesignate former (c) as (c-1).

Emergency act amendments. — For temporary amendment of section, see § 1702(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-198. — See note to § 1-624.1.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — See note to § 1-603.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Legislative history of Law 12-264. — See note to § 1-603.1.

Mayor authorized to issue rules. — See note to § 1-624.1.

Application of § 150(c) of Pub. L. 105-100. — Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

§ 1-624.4. Vocational rehabilitation.

(a) The Mayor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Mayor shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Mayor, insofar as practicable, shall use the services or facilities of the District of Columbia government. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund.

(b) Notwithstanding § 1-624.6, individuals directed to undergo vocational rehabilitation by the Mayor, while undergoing such rehabilitation, shall receive compensation at the rate provided in §§ 1-624.5 and 1-624.10, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation. (1973 Ed., § 1-353.4; Mar. 3, 1979, D.C. Law 2-139, § 2304, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.11, 1-624.13, and 1-624.17. **Legislative history of Law 2-139.** — See note to § 1-601.1.

§ 1-624.5. Total disability.

(a) If the disability is total, the District of Columbia government shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of his or her monthly pay, which shall be known as his or her basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs or the loss of sight of both eyes is prima facie permanent total disability. (1973 Ed., § 1-353.5; Mar. 3, 1979, D.C. Law 2-139, § 2305, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.4, 1-624.7, and 1-624.10. **Cited** in Newman v. District of Columbia, App. D.C., 518 A.2d 698 (1986). **Legislative history of Law 2-139.** — See note to § 1-601.1.

§ 1-624.6. Partial disability.

(a) If the disability is partial, the District of Columbia government shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of the difference between his or her monthly pay and his or her monthly wage-earning capacity after the beginning of the partial disability. This shall be known as his or her basic compensation for partial disability.

(b) The Mayor may require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Mayor specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his or her earnings in employment or self-employment and which can be estimated in money. An employee who does the following:

- (1) Fails to make an affidavit or report when required; or
- (2) Knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.

Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under § 1-624.29, unless recovery is waived under that section.

(c) A partially disabled employee who: (1) Refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered to, procured by, or

secured for him or her is not entitled to compensation and such payment shall be suspended. (1973 Ed., § 1-353.6; Mar. 3, 1979, D.C. Law 2-139, § 2306, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(p), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.4, 1-624.7, and 1-624.10.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Cited in Newman v. District of Columbia, App. D.C., 518 A.2d 698 (1986).

§ 1-624.7. Compensation schedule.

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of 66⅔ percent of his or her monthly pay. The basic compensation shall be:

(1) Payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) In addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by the following:

(1) Section 1-624.5, if the disability is total; or

(2) Section 1-624.6, if the disability is partial.

(c) The compensation schedule is as follows:

(1) Arm lost, 312 weeks' compensation;

(2) Leg lost, 288 weeks' compensation;

(3) Hand lost, 244 weeks' compensation;

(4) Foot lost, 205 weeks' compensation;

(5) Eye lost, 160 weeks' compensation;

(6) Thumb lost, 75 weeks' compensation;

(7) First finger lost, 46 weeks' compensation;

(8) Great toe lost, 38 weeks' compensation;

(9) Second finger lost, 30 weeks' compensation;

(10) Third finger lost, 25 weeks' compensation;

(11) Toe other than great toe lost, 16 weeks' compensation;

(12) Fourth finger lost, 15 weeks' compensation;

(13) Loss of hearing:

(A) Complete loss of hearing of 1 ear, 52 weeks' compensation; or

(B) Complete loss of hearing of both ears, 200 weeks' compensation;

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of any eye is the same as for loss of the eye;

(15) Compensation for loss of more than 1 phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the 1st phalanx is one-half of the compensation for loss of the entire digit;

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively;

(17) Compensation for loss of use of 2 or more digits or 1 or more phalanges of each of 2 or more digits of a hand or foot is proportioned to the loss of the use of the hand or foot occasioned thereby;

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member;

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction;

(20) In case of loss of use of more than 1 member or parts of more than 1 member as enumerated by this schedule, the compensation is for loss of the use of each member or part thereof and the awards run consecutively. When the injury affects only 2 or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears;

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$7,500 shall be awarded in addition to any other compensation payable under this schedule; or

(22) For permanent loss or loss of use of any other important external or internal organ of the body, as determined by the Mayor, proper and equitable compensation not to exceed 312 weeks for each organ so determined shall be paid in addition to any other compensation payable under this schedule. (1973 Ed., § 1-353.7; Mar. 3, 1979, D.C. Law 2-139, § 2307, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(q), 27 DCR 2632; Mar. 6, 1991, D.C. Law 8-198, § 3(c), 37 DCR 6890.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.8 to 1-624.10, 1-624.15, and 1-624.16.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 8-198. — See note to § 1-624.1.

Mayor authorized to issue rules. — See note to § 1-624.1.

Cited in *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988).

§ 1-624.8. Reduction of compensation for subsequent injury to same member.

The period of compensation payable under the schedule in § 1-624.7 is reduced by the period of compensation paid or payable under the schedule for an earlier injury if: (1) Compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and (2) the Mayor finds that compensation payable for the later disability, in whole or in part, would duplicate the compensation payable for the preexisting disability. In such a case, compensation for disability continuing after the scheduled period starts on the expiration of that period as reduced

under this section. (1973 Ed., § 1-353.8; Mar. 3, 1979, D.C. Law 2-139, § 2308, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.9. Beneficiaries of awards unpaid at death; order of precedence.

(a) If an individual: (1) Has sustained disability compensable under § 1-624.7(a); (2) has filed a valid claim in his or her lifetime; and (3) dies from a cause other than the injury before the end of the period specified by the schedule; the compensation specified by the schedule that is unpaid at his or her death, whether or not accrued or due at his or her death, shall be paid:

(A) Under an award made before or after the death;

(B) For the period specified by the schedule;

(C) To and for the benefit of the persons then in being within the classes and on the conditions and in proportions specified by this section; and

(D) In the following order of precedence:

(i) If there is no child, to the widow or widower;

(ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children;

(iii) If there is no widow or widower, to the child or children;

(iv) If there is no survivor in the above classes, to the parent or parents completely or partially dependent for support on the decedent, or to other completely dependent relatives listed by § 1-624.33, or to both in proportions provided by rules and regulations; or

(v) If there is no survivor in the above classes and no burial allowance is payable under § 1-624.34, an amount not exceeding that which would be expendable under § 1-624.34, if applicable, shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he or she has paid the burial expenses: Except, that a compensated insurer or other person obligated by law or contract to pay the burial expenses or a state or political subdivision or entity is deemed not equitably entitled to such reimbursal.

(b)(1) Except as provided in paragraph (2) of this subsection, payments under subsection (a) of this subsection, except for an amount payable for a period preceding the death of the employee, are at the basic rate of compensation for permanent disability specified by § 1-624.7.

(2) For an employee who would otherwise be an employee for purposes of this subchapter whose date of hire was before January 1, 1980, or whose claim for compensation for disability or death was pending before December 29, 1994, payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the employee, are at the basic rate of compensation for permanent disability specified by § 1-624.7, even if at the time of death the employee was entitled to the augmented rate specified by § 1-624.10.

(c) A surviving beneficiary under subsection (a) of this section, except one under sub-subparagraph (v) of subparagraph (D) of paragraph (3) of subsection

(a) of this section, does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under sub-subparagraph (v) of subparagraph (D) of paragraph (3) of subsection (a) of this section, ceases to be entitled to payment on the happening of an event which would terminate his or her right to compensation for death under § 1-624.33. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section. (1973 Ed., § 1-353.9; Mar. 3, 1979, D.C. Law 2-139, § 2309, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(c), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.15.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned

Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 1-624.10. Augmented compensation for dependents.

(a) For the purpose of this section, and except as provided in subsection (a-1) of this section, “dependent” means the following:

(1) A spouse, if:

(A) He or she is a member of the same household as the employee;

(B) He or she is receiving regular contributions from the employee for his or her support; or

(C) The employee has been ordered by a court to contribute to his or her support;

(2) An unmarried child, while living with the employee or receiving regular contributions from the employee toward his or her support, and who is:

(A) Under 18 years of age; or

(B) Over 18 years of age and incapable of self-support because of physical or mental disability; and

(3) A parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (2) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he or she is a student as defined by § 1-624.1 at the time he or she reaches 18 years of age for so long as he or she continues to be such a student or until he or she marries.

(a-1) For employees hired after December 31, 1979, who make a claim for compensation for disability or death after December 29, 1994, the term “dependent” means the natural issue of the employee or minor legally adopted by the employee prior to the injury who is:

(1) Under 18 years of age and dependent upon the employee for support; or

(2) Over 18 years of age and incapable of self-support because of physical or mental disability.

(b) Except as provided in subsection (b-1) of this section, a disabled employee with one or more dependents is entitled to have his or her basic compensation for disability augmented:

(1) At the rate of $8\frac{1}{3}$ percent of his or her monthly pay if that compensation is payable under § 1-624.5 or 1-624.7(a); or

(2) At the rate of $8\frac{1}{3}$ percent of the difference between his or her monthly pay and his or her monthly wage-earning capacity if that compensation is payable under § 1-624.6.

(b-1) For employees hired after December 31, 1979, who make a claim for compensation for disability or death after December 29, 1994, a disabled employee with one or more dependents is entitled to have his or her basic compensation for disability augmented:

(1) At the rate of 8% of his or her monthly pay if his or her salary is equivalent to DS-2, Step 1 through DS-6, Step 5 in the collective bargaining unit; or

(2) At the rate of 6% of his or her monthly pay if his or her salary is equivalent to DS-7, Step 1 through DS-12, Step 10 in the collective bargaining unit. (1973 Ed., § 1-353.10; Mar. 3, 1979, D.C. Law 2-139, § 2310, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(r), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 810(d), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 4(b), 44 DCR 1271.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.4, 1-624.9, and 1-624.12.

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (a).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of

1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — See note to § 1-603.1.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

§ 1-624.11. Additional compensation for services of attendants or vocational rehabilitation.

(a) The Mayor may pay an employee who has been awarded compensation an additional sum of not more than \$500 a month, as he or she considers necessary, when he or she finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet or is paralyzed and unable to walk or because of another disability resulting from the injury making him or her so helpless as to require constant attendance.

(b) The Mayor may pay an individual undergoing vocational rehabilitation under § 1-624.4 additional compensation necessary for his or her mainte-

nance, but not to exceed \$200 a month. (1973 Ed., § 1-353.11; Mar. 3, 1979, D.C. Law 2-139, § 2311, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.12. **Legislative history of Law 2-139.** — See note to § 1-601.1.

§ 1-624.12. Maximum and minimum monthly compensation.

(a) Except as provided by § 1-624.38, the monthly rate of compensation for disability, including augmented compensation under § 1-624.10, but not including additional compensation under § 1-624.11, may not be more than 75% of the monthly pay of the maximum rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XII of this chapter. In case of total disability and except as provided in subsection (b) of this section, the monthly rate of compensation may not be less than 75% of the monthly pay of the minimum rate of basic pay for GS-2 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XII of this chapter, or the amount of the monthly pay of the employee, whichever is less.

(b) For employees hired after December 31, 1979, who make a claim for compensation for disability or death after December 29, 1994, except as provided in § 1-624.38, the monthly rate of compensation for disability, including augmented compensation under § 1-624.10, but not including additional compensation under § 1-624.11, may not be more than 73% of the monthly pay of the maximum rate of basic pay for DS-12, Step 10. In the case of total disability the monthly rate of compensation may not be less than 75% of the monthly pay of the minimum rate of basic pay for DS-2, Step 1, or the amount of the monthly pay of the employee, whichever is less. (1973 Ed., § 1-353.12; Mar. 3, 1979, D.C. Law 2-139, § 2312, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(e), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.38. **Legislative history of Law 10-253.** — See note to § 1-624.1. **Legislative history of Law 2-139.** — See note to § 1-601.1. **Legislative history of Law 11-52.** — See note to § 1-624.10.

§ 1-624.13. Increase or decrease of basic compensation.

(a) If an individual: (1) Was a minor or employed in a learner's capacity at the time of injury; or (2) was not physically or mentally handicapped before the injury, the Mayor, on review under § 1-624.28 after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under § 1-624.4, the Mayor may review such failure under § 1-624.28. If the Mayor, upon review, finds that in the absence of such failure the wage-earning capacity of the individual would

probably have substantially increased, the Mayor may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his or her wage-earning capacity in the absence of the failure, until such time as the individual in good faith complies with the direction of the Mayor. (1973 Ed., § 1-353.13; Mar. 3, 1979, D.C. Law 2-139, § 2313, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(s), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.14. Computation of pay.

(a) For the purpose of this section:

(1) The term “overtime pay” means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of work time, as observed by the employing establishment.

(2) The term “year” means a period of 12 calendar months, or the equivalent thereof as specified by rules and regulations prescribed by the Mayor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earning. For so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, at the discretion of the Mayor, may be computed on the basis of the actual daily wage of the employee at the time of injury, in which event he or she may receive compensation for the days he or she would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay:

(A) Was fixed, the average annual earnings are the annual rate of pay; or

(B) Was not fixed, the average annual earnings are the product obtained by multiplying his or her daily wage for the particular employment or the average thereof, if the daily wage has fluctuated; by 300, if he or she was employed on the basis of a 6 day workweek; 280, if employed on the basis of a 5½ day workweek; and 260, if employed on the basis of a 5 day workweek;

(2) If the employee did not work in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the

same class working substantially the whole immediately preceding year in the same or similar employment with the District government, as determined under paragraph (1) of this subsection;

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he or she was working at the time of the injury having regard to the previous earnings of the employee in District of Columbia government employment, and of other employees of the District of Columbia government in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee or other relevant factors. The average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his or her injury; or

(4) If the employee served without pay or a nominal pay, paragraphs (1), (2), and (3) of this subsection apply, as far as practicable, but the average earnings of the employee may not exceed the minimum rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XII of this chapter; provided that the average earnings of the employee may not exceed the minimum rate of basic pay for DS-12, Step 10 or its equivalent in the collective bargaining unit for those employees hired after December 31, 1979, who make a claim for compensation for disability after December 29, 1994. If the average annual earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money and premium pay under § 5545(c)(1) of Title 5 of the United States Code, are included as part of the pay, but account is not taken of the following:

(1) Overtime pay;

(2) Additional pay or allowance authorized outside the District of Columbia government because of differential in cost of living or other special circumstances; or

(3) Bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service. (1973 Ed., § 1-353.14; Mar. 3, 1979, D.C. Law 2-139, § 2314, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(f), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.15, and 1-624.33.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — See note to § 1-624.10.

§ 1-624.15. Determination of wage-earning capacity.

(a) In determining compensation for partial disability, except permanent partial disability compensable under §§ 1-624.7 and 1-624.9, the wage-

earning capacity of an employee is determined by his or her actual earnings, if his or her actual earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, his or her wage-earning capacity as appears reasonable under the circumstances is determined with due regard to the following:

- (1) The nature of his or her injury;
- (2) The degree of physical impairment;
- (3) His or her usual employment;
- (4) His or her age;
- (5) His or her qualifications for other employment;
- (6) The availability of suitable employment; and
- (7) Other factors or circumstances which may affect his or her wage-earning capacity in his or her disabled condition.

(b) Section 1-624.14 is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability. (1973 Ed., § 1-353.15; Mar. 3, 1979, D.C. Law 2-139, § 2315, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.16. Limitation of right to receive compensation.

(a) While an employee is receiving compensation under this subchapter or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he or she may not receive salary, pay, or remuneration of any type from the District of Columbia, except:

- (1) In return for service actually performed;
- (2) Pension for service in the Army, Navy, or Air Force;
- (3) Other benefits administered by the Veterans Administration unless such benefits are payable for the same injury or the same death; and
- (4) Retired pay, retirement pay, retainer pay, or equivalent pay for service in the armed forces or other uniformed services, subject to the reduction of such pay in accordance with § 5532 of Title 5 of the United States Code. Eligibility for or receipt of benefits under subchapter III of Chapter 83 of Title 5 of the United States Code or another retirement or disability system for employees of the government does not impair the right of the employee to compensation for scheduled disabilities specified by subsection (c) of § 1-624.7.

(b) An individual entitled to benefits under this subchapter because of his or her injury, or because of the death of an employee who also is entitled to receive from the District of Columbia government under a provision of a statute, other than this subchapter, payment or benefits for that injury or death (except proceeds of an insurance policy), because of service by him or her (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he or she will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Mayor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the District of Columbia government or an instrumentality thereof, under this subchapter or any extension thereof with respect to the injury or death of an employee, is exclusive and instead of all other liability of the District of Columbia government or the instrumentality to the employee, his or her legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the District of Columbia or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute. This subchapter does not apply to a master or a member of a crew of a vessel. (1973 Ed., § 1-353.16; Mar. 3, 1979, D.C. Law 2-139, § 2316, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(t), (u), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 10-253. — See note to § 1-624.1.

Jurisdiction over claims. — If there is a "substantial question" whether an employee's injury is covered by the Comprehensive Merit Personnel Act, the employee must submit her claim to the Department of Employment Services. She may then sue the District only if the claim is disallowed. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Where plaintiff's claims were covered by the disability compensation provisions of the Comprehensive Merit Personnel Act, she was required to submit them initially to the District of Columbia Department of Employment Services, which had primary jurisdiction. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

The requirement that claimants submit claims to the Department of Employment Services before filing suit, the defense of "primary jurisdiction," cannot be waived even if not raised before or during trial. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Elements of exclusivity. — For the exclusivity provision to come into play 5 elements must be shown: (1) There must have been a "personal injury" within the meaning of the Merit Personnel Act; (2) the victim must be an employee of the District of Columbia government; (3) the injury must have been sustained while in the performance of the employee's duty; (4) the injury must either have caused death or else a disability within the meaning of the Merit Personnel Act; and (5) the injury must not have been caused by any of the 3 exceptions listed in the Merit Personnel Act — the employee's willful misconduct, intention to bring about the injury, or intoxication. *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986).

Limitation of tort liability. — An employee may sue the District only if the employee's injury falls outside of the scope of the Comprehensive Merit Personnel Act. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

Suffer personal injury. — Because defendant did not suffer an injury causing a disability which, in combination, would entitle him to guaranteed compensation under the Merit Personnel Act, the exclusivity provision in this section had no effect on defendant's ability to exercise whatever common law rights were available. *Newman v. District of Columbia*, App. D.C., 518 A.2d 698 (1986).

Cited in *Washington v. District of Columbia*, 802 F.2d 1478 (D.C. Cir. 1986); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989).

§ 1-624.17. Time of accrual of right.

(a) An employee is not entitled to compensation or continuation of pay as provided in § 1-624.18 for the first 3 days of temporary disability which would have otherwise been workdays for the employee, except:

- (1) When the disability exceeds 14 calendar days;
- (2) When the disability is followed by permanent disability; or
- (3) As provided by §§ 1-624.3 and 1-624.4.

(b) An employee may use annual or sick leave to his or her credit at the time the disability begins but the time period specified in subsection (a) of this section does not begin to run until the use of annual or sick leave ends. (1973 Ed., § 1-353.17; Mar. 3, 1979, D.C. Law 2-139, § 2317, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(v), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

§ 1-624.18. Continuation of pay; election to use annual or sick leave.

(a) The District of Columbia government shall authorize the continuation of pay of an employee, as defined in paragraph (1) of § 1-624.1, who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Mayor within the time specified in paragraph (2) of subsection (a) of § 1-624.22.

(b) Continuation of pay under this subchapter shall be furnished:

(1) Unless controverted under rules and regulations of the Mayor;

(2) For a period not to exceed 45 days for employees hired before January 1, 1980, or for employees who have a claim for compensation for disability pending on December 29, 1994, provided that the period of continuation of pay shall not exceed 21 days for all other employees, beginning 2 years after December 29, 1994; and

(3) Under accounting procedures and such other rules and regulations as the Mayor may require.

(c) If a claim under subsection (a) of this section is denied by the Mayor, payments under this section, at the option of the employee, shall be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of § 5584 of Title 5 of the United States Code or equivalent provisions of this chapter.

(d) Payments under this section shall not be considered compensation as defined by paragraph (12) of § 1-624.1. (1973 Ed., § 1-353.18; Mar. 3, 1979, D.C. Law 2-139, § 2318, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(w), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 810(g), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.17.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — See note to § 1-624.10.

§ 1-624.19. Notice of injury or death.

An employee injured in the performance of his or her duty, or someone on his or her behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in § 1-624.33, or someone on his or her behalf. A notice of injury or death shall:

- (1) Be given within 30 days after the injury or death;
- (2) Be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
- (3) Be in writing;
- (4) State the name and address of the employee;
- (5) State the year, month, day, hour when, and the particular locality where the injury or death occurred;
- (6) State the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause;
- (7) Be signed by and contain the address of the individual giving the notice; and
- (8) Be accompanied by a form approved by the Mayor authorizing access to all related medical and earnings data concerning the claimant. (1973 Ed., § 1-353.19; Mar. 3, 1979, D.C. Law 2-139, § 2319, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.22.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.20. Report of injury.

Immediately after an injury to an employee which results in his or her death or probable disability, his or her immediate superior shall report to the Mayor. The Mayor may:

- (1) Prescribe the information that the report shall contain;
- (2) Require the immediate superior to make supplemental reports; and
- (3) Obtain such additional reports and information from employees as are agreed on by the Mayor and the head of the employing agency. (1973 Ed., § 1-353.20; Mar. 3, 1979, D.C. Law 2-139, § 2320, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.21. Claim required; contents.

(a) Compensation under this subchapter may be allowed only if an individual or someone on his or her behalf makes claim therefor. The claim shall:

- (1) Be made in writing within the time specified by § 1-624.22;
- (2) Be delivered to the Office of the Mayor or to an individual whom the Mayor may designate by rules and regulations, or deposited in the mail properly stamped and addressed to the Mayor or his or her designee;
- (3) Be on a form approved by the Mayor;
- (4) Contain all information required by the Mayor;
- (5) Be sworn to by the individual entitled to compensation or someone on his or her behalf; and

(6) Except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

(b) The Mayor may waive paragraphs (3) through (6) of subsection (a) of this section for reasonable cause shown. (1973 Ed., § 1-353.21; Mar. 3, 1979, D.C. Law 2-139, § 2321, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(x), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

§ 1-624.22. Time for making claim.

(a) An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in a disability case, may not be allowed if claim is not filed within that time unless:

(1) The immediate superior has actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or

(2) Written notice of injury or death as specified in § 1-624.19 was given within 30 days.

(b) In a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his or her employment. In such a case, the time for giving notice of injury begins to run when the employee is aware or, by the exercise of reasonable diligence, should have been aware that his or her condition is causally related to his or her employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not:

(1) Begin to run against a minor until he or she reaches 21 years of age or has had a legal representative appointed; or

(2) Run against an incompetent individual while he or she is incompetent and has no duly appointed legal representative; or

(3) Run against any individual whose failure to comply is excused by the Mayor on the ground that such notice could not be given because of exceptional circumstances. (1973 Ed., § 1-353.22; Mar. 3, 1979, D.C. Law 2-139, § 2322, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(y), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.18, and 1-624.21.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Cited in *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

§ 1-624.23. Physical examinations.

(a) An employee shall submit to examination by a medical officer of the District of Columbia government, or by a physician designated or approved by the Mayor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him or her present to participate in the examination.

(a-1) Each person who provides medical care or service under this subchapter shall utilize a standard coding system for reports and bills pursuant to regulations prescribed by the Mayor.

(a-2) Any medical care or service furnished or scheduled to be furnished under this subchapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

(1) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this subchapter and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission.

(2) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or District of Columbia government may initiate review by a utilization review organization or individual.

(3) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

(4) Disputes between a medical care provider, employee, or District of Columbia government on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing by the District of Columbia government, employee, or medical provider. The decision of the Mayor may be reviewed by the Superior Court of the District of Columbia. The decision may be affirmed, modified, revised, or remanded in the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence on the record.

(5) The District of Columbia government shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

(a-3) Medical care providers shall not hold employees liable for services rendered in connection with a compensable injury under this subchapter.

(b) An employee is entitled to be paid expenses incident to an examination required by the Mayor which, in the opinion of the Mayor, are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(c) The Mayor shall fix the fees for examinations under this section by physicians not employed by or under contract to the District of Columbia government to furnish medical services to employees. The fees, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his or her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee. (1973 Ed., § 1-353.23; Mar. 3, 1979, D.C. Law 2-139, § 2323, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(d), 37 DCR 6890.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.3.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-198. — See note to § 1-624.1.

Mayor authorized to issue rules. — See note to § 1-624.1.

§ 1-624.24. Time for making claim; finding of facts; award; right to hearing; conduct of hearing.

(a) The Mayor or his or her designee shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after the following:

(1) Considering the claim presented by the beneficiary and the report furnished by the immediate superior; and

(2) Completing such investigation as the Mayor or his or her designee considers necessary.

(b)(1) Before review under § 1-624.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a representative of the Mayor. At the hearing, the claimant and the Corporation Counsel are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Corporation Counsel, and the Benefits Administration Office of the Department of Employment Services in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision.

(2) In conducting the hearing, the representative of the Mayor is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, or by the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he or she shall receive such relevant evidence as the claimant adduces and such other evidence as he or she determines necessary or useful in evaluating the claim.

(c) Repealed.

(d) If the Mayor or his or her designee has reason to believe a change of condition has occurred, the Mayor or his or her designee may modify the award

of compensation under the procedures of subsection (a) of this section. Where the Mayor or his or her designee has modified an award of compensation, the claimant shall have the right to a hearing under subsection (b) of this section. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Corporation Counsel, and the Benefits Administration Office of the Department of Employment Services in writing of his or her decision and the basis of the decision. The claimant and the Office of Corporation Counsel shall have the right to seek review of the decision under § 1-624.28 within 30 days of the issuance of the decision. (1973 Ed., § 1-353.24; Mar. 3, 1979, D.C. Law 2-139, § 2324, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(z), 27 DCR 2632; Mar. 6, 1991, D.C. Law 8-198, § 3(e), 37 DCR 6890; Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(c)(3); Mar. 26, 1999, D.C. Law 12-175, § 2102(c), 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.44.

Effect of amendments. — Section 150(c)(3) of Pub. L. 105-100, 111 Stat. 2181, repealed (c). D.C. Law 12-175 inserted “or his or her designee” in the introductory language of (a) and in (a)(2); rewrote (b)(1); and added (d).

Emergency act amendments. — For temporary amendment of section, see § 1702(c) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 8-198. — See note to § 1-624.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Mayor authorized to issue rules. — See note to § 1-624.1.

Application of § 150(c) of Pub. L. 105-100. — Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

§ 1-624.25. Misbehavior at proceedings.

If an individual does the following: (1) Disobeys or resists a lawful order or process in proceedings under this subchapter before the Mayor or his or her representative; or (2) misbehaves during a hearing or so near the place of hearing as to obstruct it, the Mayor or his or her representative shall certify the facts to the Superior Court of the District of Columbia. The Court, in a summary manner, shall hear the evidence as to the acts complained of and, if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the Court, or commit the individual on the same conditions as if the forbidden act has occurred with reference to the process of or in the presence of the Court. (1973 Ed., § 1-353.25; Mar. 3, 1979, D.C. Law 2-139, § 2325, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.26. Subpoenas; oaths; examination of witnesses.

The Mayor, on any matter within his or her jurisdiction under this subchapter, shall have the authority to:

- (1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles of the District of Columbia;
- (2) Administer oaths;
- (3) Examine witnesses; and
- (4) Require the production of books, papers, documents, and other evidence. (1973 Ed., § 1-353.26; Mar. 3, 1979, D.C. Law 2-139, § 2326, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Cited in Smith v. District of Columbia Dep't of Emp. Servs., App. D.C., 494 A.2d 1340 (1985).

§ 1-624.27. Representation; attorneys; fees.

(a) A claimant may authorize an individual to represent him or her in any proceeding under this subchapter before the Mayor.

(b) A claim for legal or other services furnished on behalf of a claimant in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Mayor. (1973 Ed., § 1-353.27; Mar. 3, 1979, D.C. Law 2-139, § 2327, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(d), 45 DCR 7193.)

Section references. — This section is referred to in § 1-624.1.

Effect of amendments. — D.C. Law 12-175 inserted "on behalf of a claimant" in (b).

Emergency act amendments. — For temporary amendment of section, see § 1702(d) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(d) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Constitutionality. — The rules regulating attorney's fees for contested workers' compensation claims arising under this subchapter do not violate due process. *Cornelious v. District of Columbia Employees' Comp. Appeals Bd.*, App. D.C., 704 A.2d 853 (1997).

§ 1-624.28. Review of award.

(a) The Director may review an award for or against payment of compensation on application by either the claimant or the Office of the Corporation Counsel. An application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to § 1-624.24(b)(1). The decision of the Mayor or his or her designee pursuant to § 1-624.24(b)(1) may be affirmed, modified, revised, or remanded in the discretion of the Director. The decision of the Mayor or his or her designee pursuant to § 1-624.24 shall be affirmed if supported by substantial competent evidence on the record. The Director shall notify the claimant, the Corporation Counsel, and the Benefits Administration

Office of the Department of Employment Services in writing of his or her decision.

(b) The action of the Director in allowing or denying a payment under this subchapter may be reviewed by the District of Columbia Court of Appeals. An application for review to the District of Columbia Court of Appeals shall be filed within 30 days of the date of the issuance of the decision by the Director. The decision of the Director may be affirmed, modified, revised or remanded in the discretion of the Court. The decision of the Director shall be affirmed if supported by substantial competent evidence on the record. Credit shall be allowed in the accounts of a certifying or disbursing official for payment in accordance with that action.

(c) Notwithstanding subsection (b) of this section, an action in which the United States Department of Labor (or other federal authority) participated at any stage of the adjudication allowing or denying payment under this subchapter pursuant to an agreement with the District of Columbia is:

(1) Final and conclusive for all purposes and with respect to all questions of law or fact; and

(2) Not subject to review by a court by mandamus or otherwise. (1973 Ed., § 1-353.28; Mar. 3, 1979, D.C. Law 2-139, § 2328, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(aa), 27 DCR 2632; Mar. 26, 1999, D.C. Law 12-175, § 2102(e), 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.13, and 1-624.24.

Effect of amendments. — D.C. Law 12-175 rewrote the section.

Emergency act amendments. — For temporary amendment of section, see § 1702(e) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(e) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 12-175. — See note to § 1-603.1.

Final determination is reviewable at time of issuance. — Order of Employees' Compensation Appeals Board, being the Board's final determination, became reviewable in Superior Court the instant it was issued and losing party had only 30 days after receiving

"formal notice" of the order within which to file her petition for review. *Jackson v. District of Columbia Employees' Comp. Appeals Bd.*, App. D.C., 537 A.2d 576 (1988).

Underlying purpose of subsection (c) of this section is to insulate the Department of Labor from judicial review of actions taken pursuant to the processing of claims of District employees under the agreement. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 494 A.2d 1340 (1985).

Term "adjudication" in subsection (c) of this section refers to involvement by the Department of Labor in the processing of claims of District employees at the prehearing stage. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 494 A.2d 1340 (1985).

Subsection (c) includes review and audit of claims. — The statutory language in subsection (c) of this section, referring to participation by the Department of Labor "at any stage of the adjudication ... pursuant to an agreement," includes the review and audit of claims. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 494 A.2d 1340 (1985).

§ 1-624.29. Recovery of overpayments.

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, under rules and regulations prescribed by the Mayor, either recovery of the overpayments shall be required

of the individual or adjustment shall be made by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, an adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the District of Columbia government may be waived when incorrect payment has been made to an individual who is without fault and when recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when:

(1) Adjustment or recovery of the amount is waived under subsection (b) of this section; or

(2) Adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized. (1973 Ed., § 1-353.29; Mar. 3, 1979, D.C. Law 2-139, § 2329, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(f), 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.6.

Effect of amendments. — D.C. Law 12-175 rewrote (a) and (b).

Emergency act amendments. — For temporary amendment of section, see § 1702(f) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(f) of the Fiscal

Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

§ 1-624.30. Assignment of claim.

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors. (1973 Ed., § 1-353.30; Mar. 3, 1979, D.C. Law 2-139, § 2330, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.31. Subrogation of the District of Columbia.

(a)(1) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the District of Columbia government to pay damages, the Mayor may require the beneficiary to do the following:

(A) Assign to the District of Columbia government any right of action he or she may have to enforce the liability or any right he or she may have to share in money or other property received in satisfaction of that liability; or

(B) Prosecute the action in his or her own name.

(2) An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his or her own name when required by the Mayor is not entitled to compensation under this subchapter.

(c) The Mayor may prosecute or compromise a cause of action assigned to the District of Columbia government. When the Mayor realizes on the cause of action, he or she shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payment of compensation payable for the same injury. The beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted. (1973 Ed., § 1-353.31; Mar. 3, 1979, D.C. Law 2-139, § 2331, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.42.

Cited in *Voytsechovska v. Albert*, 126 WLR 849 (Super. Ct. 1998).

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.32. Adjustment after recovery from third person.

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the District of Columbia government to pay damages, and a beneficiary entitled to compensation from the District of Columbia government for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or her in his or her behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the District of Columbia government the amount of compensation paid by the District of Columbia government and credit any surplus on future payments of compensation payable to him or her for the same injury. No court, insurer, attorney or other person shall pay or distribute to the beneficiary or his or her designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the District of Columbia government. The amount refunded to the District of Columbia government shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he or she shall credit the money or property on compensation payable to him or her by the District of Columbia government for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted, and, in addition to this minimum and at the time of distribution, to retain an amount equivalent to a reasonable attorney's fee proportionate to the refund to the District of Columbia government. (1973 Ed., § 1-353.32; Mar. 3, 1979, D.C. Law 2-139, § 2332, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(bb), 27 DCR 2632.)

Cross references. — As to existing right to reimbursement for health care assistance, see § 3-509.

Section references. — This section is referred to in §§ 1-624.1 and 1-624.42.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Right of reimbursement. — The plain language of this section creates an unqualified right of reimbursement for workers' compensation benefits paid, regardless of the type of damages recovered from the third party. *Lee v. District of Columbia, App. D.C., 559 A.2d 308 (1989).*

Cited in *Millender v. Nationwide Ins. Co., 119 WLR 1953 (Super. Ct. 1991).*

§ 1-624.33. Compensation in case of death.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, 50 percent;

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children;

(3) To the children, if there is no widow or widower, 40 percent for 1 child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children, share and share alike;

(4) To the parents, if there is no widow, widower, or child, as follows:

(A) Twenty percent, if 1 parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) Twenty percent to each, if both were wholly dependent; or

(C) A proportionate amount in the discretion of the Mayor if one or both were partly dependent. If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent;

(5)(A) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows:

(i) Twenty percent, if one was wholly dependent on the employee at the time of death;

(ii) Thirty percent, if more than one were wholly dependent, divided among the dependents, share and share alike; or

(iii) Ten percent, if no one is wholly dependent but one or more is partly dependent, divided among the dependents, share and share alike; or

(B) If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b)(1) The compensation payable under subsection (a) of this section is paid from the time of death until:

(A) A widow or widower dies or remarries before reaching age 60;

(B) A child, brother, sister, or grandchild dies, marries, or becomes 18 years of age or, if over age 18 and incapable of self-support, becomes capable of self-support; or

(C) A parent or grandparent dies, marries, or ceases to be dependent.

(2) Notwithstanding the provisions of subparagraph (B) of paragraph (1) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he or she is a student as defined by § 1-624.1 at the time he or she reaches 18 years of age for so long as he or she continues to be such a student or until he or she marries. A widow or widower who is entitled to benefits under this subchapter derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on the account of an individual, the compensation of the remaining individuals, entitled to compensation or the unexpired part of the period during which their compensation is payable is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are 2 or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Mayor may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XII of this chapter. The total monthly compensation may not exceed:

(1) The monthly pay computed under § 624.14, except for increases authorized by § 1-624.41; or

(2) Seventy-five percent of the maximum monthly rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XII of this chapter for employees hired before January 1, 1980, or for employees who have a claim for compensation for disability pending on December 29, 1994, or 73% of the maximum monthly rate of basic pay for DS-12, Step 10 for employees hired after December 31, 1979, who make a claim for compensation for disability after December 29, 1994.

(f) Notwithstanding any funeral and burial expenses paid under § 1-624.34, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of subparagraph (A) of paragraph (1) of § 1-624.1 for reimbursement of the costs of termination of the decedent's status as an employee of the District of Columbia government. (1973 Ed., § 1-353.33; Mar. 3, 1979, D.C. Law 2-139, § 2333, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(h), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.9, 1-624.19, 1-624.35, and 1-624.38.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — See note to § 1-624.10.

§ 1-624.34. Funeral expenses; transportation of body.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$5,000, at the discretion of the Mayor.

(b) The body of an employee whose home was in the United States, at the discretion of the Mayor, may be embalmed and transported in a hermetically sealed casket to his or her home or last place of residence at the expense of the Employees' Compensation Fund if:

(1) The employee dies from:

(A) The injury while away from his or her home or official station or outside the United States; or

(B) Other causes while away from his or her home or official station for the purposes of receiving medical or other services, appliances, supplies, or examination under this subchapter; and

(2) The relatives of the employee request the return of the body.

If the relatives do not request the return of the body of the employee, the Mayor may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral and burial expenses. (1973 Ed., § 1-353.34; Mar. 3, 1979, D.C. Law 2-139, § 2334, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(f), 37 DCR 6890.)

Section references. — This section is referred to in §§ 1-624.1, 1-624.9, and 1-624.33.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 8-198. — See note to § 1-624.1.

Mayor authorized to issue rules. — See note to § 1-624.1.

§ 1-624.35. Lump-sum settlements.

(a) The claimant may enter into an agreement with the Mayor or his or her designee for a lump-sum settlement. Such settlements must be in writing and signed by the Mayor or his or her designee and the claimant. If the claimant is represented by counsel, the settlement documents must also be signed by the attorney for the claimant. Such settlements are to be the complete and final dispositions of a case and once approved require no further action by the Mayor or his or her designee.

(b) In reaching an agreement for a lump-sum settlement pursuant to this section, the probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current available United States Life Tables, as developed by the United States Department of Health and Human Services, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the occurrence of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage before reaching age 60, a widow or widower entitled to compensation under § 1-624.33 shall be paid a lump-sum equal to 24 times the monthly compensation payment (excluding compensation on account of an-

other individual) to which he or she was entitled immediately before the remarriage.

(d) Lump-sum settlements may not be reviewed or modified under § 1-624.24 or § 1-624.28, except in case of fraud or misrepresentation by any party. (1973 Ed., § 1-353.35; Mar. 3, 1979, D.C. Law 2-139, § 2335, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(g), 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.37.

Effect of amendments. — D.C. Law 12-175 rewrote the section.

Emergency act amendments. — For temporary amendment of section, see § 1702(g) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(g) of the Fiscal

Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

§ 1-624.36. Injury incurred; initial payments outside United States.

If an employee is injured outside the continental United States, the Mayor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the District of Columbia government designated by the Mayor for that purpose in the locality in which the employee was employed or the injury incurred. (1973 Ed., § 1-353.36; Mar. 3, 1979, D.C. Law 2-139, § 2336, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.37. Compensation for noncitizens and nonresidents.

(a) When the Mayor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he or she may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by:

(1) The adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) Establishing special schedules of compensation for injury, death and loss of use of members and functions of the body for specific classes of employees, areas, and place. Irrespective of the basis adopted, the Mayor may at any time:

(A) Modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) Modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) Modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Mayor or his or her designee may:

(1) Make a lump sum award in the manner prescribed by § 1-624.35 when he or she, or his or her designee, considers it to be for the best interest of the District of Columbia government; and

(2) Compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law. Compensation paid under this subsection is instead of all other compensation from the District of Columbia government for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and satisfaction of all liability of the District of Columbia government in respect to the particular injury or death.

(c) The Mayor may delegate to an employee or agency of the District of Columbia government, with such limitations and right of review as he or she considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such rules, regulations, and instructions as the Mayor considers necessary. For this purpose, the Mayor may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Mayor may waive the application of this subchapter in whole or in part and for such period or periods as he or she may fix if the Mayor finds that:

(1) Conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) Claimants under this section are alien enemies.

(e) The Mayor may apply this section retrospectively with adjustment of compensation and benefits as he or she considers necessary and proper. (1973 Ed., § 1-353.37; Mar. 3, 1979, D.C. Law 2-139, § 2337, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(cc), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

§ 1-624.38. Minimum limit modification for noncitizens and aliens.

The minimum limit on monthly compensation for disability under § 1-624.12 and the minimum limit on monthly pay on which death compensation is computed under § 1-624.33 do not apply in the case of a noncitizen employee or a class or classes of noncitizen employees who sustain injury outside the continental United States. The Mayor may establish a minimum monthly pay

on which death compensation is computed in the case of a class or classes of such noncitizen employees. (1973 Ed., § 1-353.38; Mar. 3, 1979, D.C. Law 2-139, § 2338, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.12. **Legislative history of Law 2-139.** — See note to § 1-601.1.

§ 1-624.39. Student-employees.

A student-employee, as defined by § 5351 of Title 5 of the United States Code, who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty. (1973 Ed., § 1-353.39; Mar. 3, 1979, D.C. Law 2-139, § 2339, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1. **Legislative history of Law 2-139.** — See note to § 1-601.1.

§ 1-624.40. Administration.

The Mayor shall administer and decide all questions arising under this subchapter. He or she may:

- (1) Appoint employees to administer this subchapter; and
- (2) Delegate to the Director of the Department of Employment Services any of the powers conferred on him or her by this subchapter. (1973 Ed., § 1-353.40; Mar. 3, 1979, D.C. Law 2-139, § 2340, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(i), 42 DCR 3684.)

Section references. — This section is referred to in § 1-624.1. **Legislative history of Law 2-139.** — See note to § 1-601.1. **Legislative history of Law 10-253.** — See note to § 1-624.1. **Legislative history of Law 11-52.** — See note to § 1-624.10. **Waiver of jurisdiction.** — The requirement that claimants submit claims to the Department of Employment Services before filing suit, the defense of “primary jurisdiction,” cannot be waived even if not raised before or during trial. *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), modified, App. D.C., 593 A.2d 621, cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991).

§ 1-624.41. Cost-of-living adjustment of compensation.

On or after April 1, 1990, increases in compensation payable due to disability or death shall be in the same percentage amount and shall have the same effective date as any base salary increase granted, pursuant to §§ 1-612.5 and 1-612.6, to employees in the Career and Excepted Services not covered by collective bargaining. To be eligible for the increase, the disability or death of the employee must have occurred at least 1 year prior to the effective date of the increase. (1973 Ed., § 1-353.41; Mar. 3, 1979, D.C. Law 2-139, § 2341, 25 DCR 5740; Mar. 15, 1990, D.C. Law 8-92, § 2, 37 DCR 778.)

Section references. — This section is referred to in §§ 1-624.1 and 1-624.33. **Legislative history of Law 2-139.** — See note to § 1-601.1.

Legislative history of Law 8-92. — Law 8-92 was introduced in Council and assigned Bill No. 8-207, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

December 19, 1989, and January 2, 1990, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-143 and transmitted to both Houses of Congress for its review.

§ 1-624.42. Employees' Compensation Fund.

(a) There is established in the District of Columbia government the Employees' Compensation Fund which consists of sums that the Council of the District of Columbia government and/or Congress, from time to time, may appropriate for or transfer to it and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. For the purpose of this section, "administrative expenses" does not include expenses for legal service performed by or for the Mayor under §§ 1-624.31 and 1-624.32.

(b) The costs and expenses of the representation of the Mayor or his or her designee by the Corporation Counsel in proceedings under §§ 1-624.24 and 1-624.28 shall be paid out of the Employees' Compensation Fund established by this section. (1973 Ed., § 1-353.42; Mar. 3, 1979, D.C. Law 2-139, § 2342, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(h), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(e), 46 DCR 2118.)

Section references. — This section is referred to in § 1-624.1.

Effect of amendments. — D.C. Law 12-175 added (b).

D.C. Law 12-264 corrected a section reference in (b).

Temporary amendment of section. — Section 2 of D.C. Law 12-239 amended (a) to read as follows:

"(a) There is established in the District of Columbia government the Employees' Compensation Fund which consists of sums that the Council of the District of Columbia government and/or Congress, from time to time, may appropriate for or transfer to it and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. For the purpose of this section, "administrative expenses" does not include expenses for legal service performed by or for the Mayor under §§ 1-624.31 and 1-624.32 or, for fiscal year 1999 only, the expenses of any contractor providing administrative services to the program."

Section 4 of D.C. Law 12-239 provided that the act shall apply as of December 8, 1998.

Section 5(b) of D.C. Law 12-239 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1702(h) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(h) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provides for the application of the act.

For temporary amendment of section, see § 2 of the Disability Compensation Administrative Financing Emergency Amendment Act of 1998 (D.C. Act 12-445, September 8, 1998, 45 DCR 6663), and § 2 of the Fiscal Year 1999 Disability Compensation Administrative Financing Emergency Amendment Act of 1998 (D.C. Act 12-572, January 12, 1999, 46 DCR 903).

Section 4 of D.C. Act 12-572 provides for the application of the act.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-175. — See note to § 1-603.1.

Legislative history of Law 12-239. — Law 12-239, the "Fiscal Year 1999 Disability Compensation Administrative Financing Tempo-

rary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-878. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 22, 1998, it was assigned Act No. 12-568 and

transmitted to both Houses of Congress for its review. D.C. Law 12-239 became effective on April 20, 1999.

Legislative history of Law 12-264. — See note to § 1-603.1.

§ 1-624.43. Compensation leave.

Any employee who has used leave as a result of a job-related injury or occupational disease or illness approved by the District government may have such leave restored to his or her credit in accordance with rules and regulations established by the Mayor. (1973 Ed., § 1-353.43; Mar. 3, 1979, D.C. Law 2-139, § 2343, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(dd), 27 DCR 2632.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.44. Rules and regulations.

The Mayor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under § 1-624.24. The rules and regulations shall provide for an Employees' Compensation Appeals Board of 3 individuals designated or appointed by the Mayor with authority to hear and, subject to applicable law and the rules and regulations of the Mayor, make final administrative decisions on appeals taken from determinations and awards with respect to claims of employees. The Mayor may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made. (1973 Ed., § 1-353.44; Mar. 3, 1979, D.C. Law 2-139, § 2344, 25 DCR 5740.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-624.45. Career and Educational Services retention rights.

(a) In the event the individual resumes employment with the District government, the entire time during which the employee was receiving compensation under this subchapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under rules and regulations issued by the Mayor the department or agency which was the last employer shall:

(1) Immediately and unconditionally accord the employee, if the injury or disability has been overcome within 2 years after the date of commencement of compensation or from the time compensable disability recurs if the recurrence

begins after the injured employee resumes regular full-time employment with the District of Columbia government, the right to resume his or her former, or an equivalent, position as well as all other attendant rights which the employee would have had or acquired in his or her former position had he or she not been injured or disabled, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures; and

(2) If the injury or disability is overcome within a period of more than 2 years after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his or her former or equivalent position within such department or agency, or within any other department or agency.

(c) Nothing in this provision shall exclude the responsibility of the employing agency to re-employ an employee in a less than full-duty status. (1973 Ed., § 1-353.45; Mar. 3, 1979, D.C. Law 2-139, § 2345, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(j), 42 DCR 3684.)

Section references. — This section is referred to in § 1-624.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 10-253. — See note to § 1-624.1.

Legislative history of Law 11-52. — See note to § 1-624.10.

§ 1-624.46. Transfer of authority.

In accordance with subsection (e) of section 204 of the District of Columbia Self-Government and Governmental Reorganization Act, the disability compensation functions previously exercised by the United States Secretary of Labor relating to the processing of claims by injured employees of the District of Columbia are transferred to the Mayor on the date that this chapter becomes effective as provided in § 1-637.1. (1973 Ed., § 1-353.46; Mar. 3, 1979, D.C. Law 2-139, § 2346, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

References in text. — “The District of Columbia Self-Government and Governmental Reorganization Act” is Pub. L. 93-198. Subsection (e) of § 204 of that act is not codified; subsections (a) and (b) of § 204 appear at § 36-701 and subsection (d) appears at § 36-406.

Application of 1980 amendments to subchapter. — Section 3 of the Act of August 7,

1980, D.C. Law 3-81, provides that the amendments made throughout this subchapter by §§ 2(p) through (dd) of that Act shall not apply to applications for disability compensation filed between May 3, 1979, and August 16, 1979, and on February 19, 1980.

Cited in District of Columbia Employee's Comp. Appeals Bd. v. Henry, App. D.C., 516 A.2d 941 (1986).

Subchapter XXV. Reductions-in-Force.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-625.1. Policy.

The Mayor and the District of Columbia Board of Education shall issue rules and regulations establishing a procedure for the orderly furloughing of

employees or termination of employees, taking full account of nondiscrimination provisions and appointments objectives of this chapter. Each agency shall be considered a competitive area for reduction-in-force purposes. A personnel authority may establish lesser competitive areas within an agency on the basis of all or a clearly identifiable segment of an agency's mission or a division or major subdivision of an agency. When as a result of a reorganization order a function is transferred from one District agency to another District agency, the procedures for transferring the employees identified with the continuing function shall be negotiated with the recognized labor organization. (1973 Ed., § 1-354.1; Mar. 3, 1979, D.C. Law 2-139, § 2401, 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-109, § 4(b), 27 DCR 3785; Mar. 5, 1996, D.C. Law 11-98, § 201(a), 43 DCR 5; Apr. 26, 1996, 110 Stat. [216], Pub. L. 104-134, § 149(a); Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 140(a); June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 substituted "orderly furloughing of employees or termination of employees" for "orderly furloughing or termination of employees" in the first sentence.

Emergency act amendments. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-109. — See note to § 1-617.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law."

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

Limitations on total number of positions. — Section 3 of D.C. Law 9-47 provided

that at no time shall the total number of positions, outside existing collective bargaining units, at grades 11 and above on the District Service Schedule and at equivalent levels in other salary or pay schedules, exceed the number of such positions in an agency on July 1, 1991, minus the number of positions abolished by the agency pursuant to this act.

Reduction in workforce. — Section 1405 of D.C. Law 11-52 provided for the elimination of at least 1,200 additional specific funded positions prior to September 30, 1995, through early retirement, a voluntary severance incentive program, and a reduction in force.

Provisions insulated from challenge under Contract Clause. — Even though the District is subject to the Contract Clause, reduction-in-force provisions enacted by the Congress are insulated from a challenge under the Contract Clause. *Washington Teachers' Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

Home Rule Act not violated. — Implementation of reduction-in-force provisions does not violate the Home Rule Act; the Financial Responsibility Act, which amended the Home Rule Act, expressly authorizes terminating an employee when implementing a financial plan approved by Congress. *Washington Teachers' Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

Due process did not require pre-termination proceedings for teachers terminated by implementation of reduction-in-force provisions; the District's need to cut expenditures quickly and efficiently outweighed the teachers' interests, especially in light of the minimal risk of error in the ranking process and the questionable value of pre-termination proceedings. *Washington Teachers' Union Local 6 v. Board of Educ.*, 109 F.3d 774 (D.C. Cir. 1997).

§ 1-625.2. Procedures.

(a) Reduction-in-force procedures shall apply to the Career and Educational Services and to persons appointed to the Excepted and Legal Services as attorneys and shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

(b)(1) For purposes of this subchapter, a veterans preference eligibility will be defined in accordance with federal law and regulations issued by the U.S. Office of Personnel Management;

(2) Creditable service in determining length of service shall include all federal, District government, and military service otherwise creditable for Civil Service retirement purposes;

(3) Performance ratings documented and approved which recognize outstanding performance shall serve to increase the employee's service for reduction-in-force purposes by 4 years during the period the outstanding rating is in effect. Performance ratings may not be changed subsequent to the establishment of retention registers and issuance of reduction-in-force notices; and

(4) Employees serving on temporary limited appointments or having unacceptable performance ratings are not entitled to compete for retention.

(c) For purposes of this subchapter, each employee who is a bona fide resident of the District of Columbia shall have 3 years added to his or her creditable service for reduction-in-force purposes. For purposes of this subsection only, a nonresident District employee who was hired by the District government prior to January 1, 1980, and has not had a break in service since that date, or a former employee of the United States Department of Health and Human Services at Saint Elizabeths Hospital who accepted employment with the District government effective October 1, 1987, and has not had a break in service since that date, shall be considered a District resident.

(d) A reduction-in-force action may not be taken until the employee has been afforded at least 15 days advance notice of such an action. The notification required by this subsection must be in writing and must include information pertaining to the employee's retention standing and appeal rights.

(e) Notwithstanding any other provision of law, the Board of Education shall not require or permit non-school-based personnel or school administrators to be assigned or reassigned to the same competitive level as classroom teachers. (1973 Ed., § 1-354.2; Mar. 3, 1979, D.C. Law 2-139, § 2402, 25 DCR 5740; Apr. 25, 1984, D.C. Law 5-79, § 2, 31 DCR 1230; Sept. 26, 1995, D.C. Law 11-52, § 1001(c), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(c), 43 DCR 5; Apr. 26, 1996, 110 Stat. [215], Pub. L. 104-134, § 145(3); Sept. 9, 1996, 110

Stat. 2372, Pub. L. 104-194, § 138(3); June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(i), 46 DCR 1318.)

Cross references. — As to creation of Educational Service, see § 1-609.1.

As to Excepted Service, see § 1-610.1.

Section references. — This section is referred to in §§ 1-625.5 and 1-625.6.

Effect of amendments. — D.C. Law 12-124 rewrote the section.

D.C. Law 12-260 substituted “Excepted and Legal Services” for “Excepted Service” in (a).

Emergency act amendments. — For temporary amendment of section, see § 2(i) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 5-79. — Law 5-79 was introduced in Council and assigned Bill No. 5-209, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on January 31, 1984 and February 14, 1984, respectively. Signed by the Mayor on March 1, 1984, it was assigned Act No. 5-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — See note to 1-624.10.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 12-124. — See note to § 1-603.1.

Legislative history of Law 12-260. — See note to § 1-604.4.

Applicability of § 101(x) of D.C. Law 12-124. — See note to § 1-625.1.

Furloughing of employees. — See Mayor’s Memorandum 89-10, February 17, 1989.

§ 1-625.3. Responsibility.

The appropriate personnel authority shall be responsible for making a final determination that a reduction in force is necessary and for ensuring that the provisions of this subchapter and rules and regulations issued pursuant to this subchapter are applied when effecting a reduction-in-force within their respective agency. (1973 Ed., § 1-354.3; Mar. 3, 1979, D.C. Law 2-139, § 2403, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 inserted “making a final determination that a reduction in force is necessary and for” and substituted “pursuant to this subchapter” for “pursuant thereto.”

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — See note to § 1-625.1.

§ 1-625.4. Appeals.

An employee who has received a specific notice that he or she has been identified for separation from his or her position through a reduction-in-force action may file an appeal with the Office of Employee Appeals if he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter. An appeal must be filed no later than 15 calendar days after the effective date of the action. The filing of an appeal shall not serve to delay the effective date of the action. (1973 Ed., § 1-354.4; Mar. 3, 1979, D.C. Law 2-139, § 2404, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 rewrote the section.

Temporary extension of authority and repeal of Law 10-6. — Section 2 of D.C. Law 10-6, effective July 23, 1993, extended the existence of the Temporary Panel of the Office of Employee Appeals, however, § 3 of D.C. Law 10-83 provided that the Temporary Appeals Panel Extension Temporary Act of 1993, effective July 23, 1993 (D.C. Law 10-6, 40 DCR 5630), is repealed.

Section 3(b) of D.C. Law 10-6 provided that the act shall expire on the 225th day of its having taken effect or upon the completion of all pending cases before the Temporary Panel, whichever occurs first.

Section 4 of D.C. Law 10-83 provided that the act shall apply after November 30, 1993.

Section 5(b) of D.C. Law 10-83 provided that the act shall expire on the 225th day of its having taken effect.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 9-47. — See note to § 1-606.11.

Legislative history of Law 10-83. — Law 10-83, the "Comprehensive Merit Personnel Act Temporary Panel of the Office of Employee

Appeals Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-430. The Bill was adopted on first and second readings on November 2, 1993, and December 7, 1993, respectively. Signed by the Mayor on December 16, 1993, it was assigned Act No. 10-157 and transmitted to both Houses of Congress for its review. D.C. Law 10-83 became effective on March 19, 1994.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — See note to § 1-625.1.

Educational employees of the University of the District of Columbia. — The Office of Employee Appeals (OEA) has jurisdiction to hear appeals of all District employees for adverse actions and grievances, but a reduction-in-force (RIF) action is not included in either of these actions, and educational employees of the University of the District of Columbia contesting RIF actions are expressly excluded from the jurisdiction of the OEA. *Davis v. University of D.C.*, App. D.C., 603 A.2d 849 (1992).

Cited in *Surgent v. District of Columbia*, App. D.C., 683 A.2d 493 (1996).

§ 1-625.5. Abolishment of positions for Fiscal Year 1997.

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2407, as added Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 140(b); Apr. 9, 1997, D.C. Law 11-200 § 2, 43 DCR 5427; Apr. 9, 1997, D.C. Law 11-255, § 57, 44 DCR 1271. ;June 10, 1998, D.C. Law 12-124, § 101(x)(2), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — See note to § 1-625.1.

§ 1-625.6. Abolishment of positions for Fiscal Year 1996.

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2406, as added Jan. 26, 1996, D.C. Law 11-78, § 401(b), 42 DCR 6181; Mar. 5, 1996, D.C. Law 11-98, § 201(b), 43 DCR 5; Aug. 1, 1996, D.C. Law 11-152, § 501, 43 DCR 2978; Apr. 26, 1996, 110 Stat. [216], Pub. L. 104-134, § 149(b); June 10, 1998, D.C. Law 12-124, § 101(x)(2), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — See note to § 1-625.1.

§ 1-625.7. Abolishment of positions for fiscal year 1999.

(a) Notwithstanding any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 1999, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment.

(b) Prior to February 1, 1999, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) Notwithstanding any rights or procedures established by any other provision of this title, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section.

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

(f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:

(1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XVI of this chapter or § 1-2543; and

(2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

(g) An employee separated pursuant to this section shall be entitled to severance pay in accordance with subchapter XII of this chapter, except that the following shall be included in computing creditable service for severance pay for employees separated pursuant to this section:

(1) Four years for an employee who qualified for veterans preference under this chapter, and

(2) Three years for an employee who qualified for residency preference under this chapter.

(h) Separation pursuant to this section shall not affect an employee's rights under either the Agency Reemployment Priority Program or the Displaced Employee Program established pursuant to Chapter 24 of the District Personnel Manual.

(i) With respect to agencies which are not subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997, the Mayor shall submit to the Council a listing of all positions to be abolished by agency

and responsibility center by March 1, 1999 or upon the delivery of termination notices to individual employees.

(j) Notwithstanding the provisions of § 1-618.8 or § 1-625.2(d), the provisions of this Act shall not be deemed negotiable.

(k) A personnel authority shall cause a 30-day termination notice to be served, no later than September 1, 1999, on any incumbent employee remaining in any position identified to be abolished pursuant to subsection (b) of this section.

(l) In the case of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997, the authority provided by this section shall be exercised to carry out the agency's management reform plan, and this section shall otherwise be implemented solely in a manner consistent with such plan. (Mar. 3, 1979, D.C. Law 2-139, § 2408, as added Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(d); Oct. 21, 1998, 112 Stat. 2681-144, Pub. L. 105-277, § 144(b).)

Effect of amendments. — Section 150(d) of Pub. L. 105-100, 111 Stat. 2181, added this section.

Public Law 105-277 substituted "1999" for "1998" in (a), (b), (i), and (k).

References in text. — "This Act," referred to in this section, is Pub. L. 105-100, 111 Stat. 2160, the District of Columbia Appropriations Act, 1998.

Subtitle B of Title XI of the Balanced Budget Act of 1997 is subtitle B of Title XI of Pub. L. 105-33, 111 Stat. 731.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that: "Nothing

in this act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 712), except that section 11105(b)(3) of the Act is expressly superseded. Further, nothing in this act shall be construed as superseding the provisions of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 97, D.C. Code § 47-391.1 et seq.) or of section 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160)."

§ 1-625.8. Severance pay.

An employee separated pursuant to this subchapter shall be entitled to severance pay in accordance with subchapter XII of this chapter, except as provided in this section.

(1) Additional service credit shall be applied as follows:

(A) Four years for an employee who qualifies for veterans preference; and

(B) Three years for an employee who qualifies for District residency preference.

(2) The total severance pay received over an employee's career in the District government shall not exceed 26 weeks of pay at the rate received immediately before separation. (Mar. 3, 1979, D.C. Law 2-139, § 2407, as added June 10, 1998, D.C. Law 12-124, § 101(x)(3), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 added this section.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(x) of D.C. Law 12-124. — Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided

that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the

Council of the District of Columbia is enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XXV-A. Transition Benefits for Displaced Employees.

§ 1-625A.1. Outplacement services for displaced employees in Fiscal Year 1996.

The outplacement services provided by the Mayor to employees displaced during Fiscal Year 1996 shall include provisions for the following:

- (1) Counseling services for stress and finance management;
- (2) Access to automated job information services;
- (3) Job fairs;
- (4) Coordination of training and job banks with the D.C. Chamber of Commerce, Business Coalition, and labor organizations;
- (5) Consulting with regional governments concerning job vacancies and job banks;
- (6) Workshops on writing resumes; and
- (7) Access to facsimile and copying machines, computers, typewriters, and telephones where local calls can be made to prospective employers. (Mar. 3, 1979, D.C. Law 2-139, § 2421, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Legislative history of Law 11-78. — Law 11-78, the “Budget Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — Law

11-98, the “Budget Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

§ 1-625A.2. Transition benefits for displaced employees in Fiscal Year 1996.

(a) This section shall apply only to employees displaced as a result of a reduction-in-force in Fiscal Year 1996.

(b) Any employee who is displaced as a result of the reduction-in-force procedure in Fiscal Year 1996 may be eligible for, to the extent there are Fiscal Year 1996 appropriations, the following:

(1) Continuation of health insurance benefits and premium contribution at the same rate as the employee had been subsidized by the District while an active employee for 2 months after separation or upon the commencement of new employment, whichever occurs first;

(2) Child care vouchers in the amount of \$75 per week payable to a licensed day care provider for each week the displaced employee is certified to be unemployed for the 6-month period following separation or through the end of the first week when the displaced employee is no longer unemployed, whichever occurs first; and

(3) Tuition assistance to attend any vocational training or GED program not to exceed one-half the yearly cost for any full-time District resident student at UDC.

(c) The benefits contained in subsection (b) of this section are subject to the following limitations:

(1) The displaced employee must be a bona fide District resident at the time of separation and must have filed a District of Columbia income tax return in the 2 years prior to separation;

(2) The continued coverage under subsection (b)(1) and (2) of this section for District employees enrolled in the Federal Employee Health Benefits Plan and Federal Employees Group Life Insurance Plan are subject to the federal regulations governing these benefits;

(3) The employee must not have been the recipient of the early out or easy out retirement incentive or voluntary severance incentive programs in Fiscal Year 1996;

(4) The limit of the Fiscal Year 1996 appropriations for this program;

(5) The employee cannot have been offered a position with a contractor for government services under § 1-1181.5b(a), and refused such offer of employment;

(6) Nothing in subsection (b) of this section shall be construed as an entitlement to any benefits; and

(7) No benefits set forth in subsection (b) of this section shall be available in any future fiscal year without additional appropriations for those benefits. (Mar. 3, 1979, D.C. Law 2-139, § 2422, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Legislative history of Law 11-78. — See note to § 1-625A.1.

Legislative history of Law 11-98. — See note to § 1-625A.1.

§ 1-625A.3. Administration of subchapter.

The Department of Employment Services shall have responsibility for the administration of this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 2423, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Legislative history of Law 11-78. — See note to § 1-625A.1.

Legislative history of Law 11-98. — See note to § 1-625A.1.

§ 1-625A.4. Reports.

The Department of Employment Services shall submit quarterly reports, until January 1, 1997, on the effectiveness of outplacement services. (Mar. 3, 1979, D.C. Law 2-139, § 2424, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Legislative history of Law 11-78. — See note to § 1-625A.1.

Legislative history of Law 11-98. — See note to § 1-625A.1.

Subchapter XXVI. Political Rights of Employees.

§ 1-626.1. Hatch Act retention.

The provisions of subchapter III of Chapter 73 of Title 5 of the United States Code, affecting political activities of employees of the District of Columbia, shall remain effective. (1973 Ed., § 1-355.1; Mar. 3, 1979, D.C. Law 2-139, § 2512, 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Section references. — This section is referred to in § 1-637.1.

§ 1-626.2. Protection of political rights of classroom teachers.

No provision of this subchapter shall be construed to limit the rights of classroom teachers to freely express political opinions. (1973 Ed., § 1-355.2; Mar. 3, 1979, D.C. Law 2-139, § 2513, 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Section references. — This section is referred to in § 1-637.1.

Subchapter XXVII. Retirement.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-627.1. Policy.

(a) It is the purpose of this subchapter to establish a financially sound and equitable program of employee retirement benefits. With respect to retirement systems, the Council recognizes that existing programs, including the program administered by the federal government, are not now financed on an actuarially sound basis. Furthermore, the rights and benefits conferred by these systems and the financial implications for participation by employees vary significantly among systems.

(b) The responsibility for creating an actuarially sound financial plan for existing retirement systems cannot and should not be borne solely by the

District government. The Council therefore fully endorses the proposition that the federal government must assist the District government in establishing and maintain the necessary financial base for all existing retirement systems. (1973 Ed., § 1-356.1; Mar. 3, 1979, D.C. Law 2-139, § 2601, 25 DCR 5740.)

Section references. — This subchapter is referred to in § 1-2295.5.

Legislative history of Law 2-139. — See note to § 1-601.1.

Retirement incentive program by Board of Education. — For authorization for the

Board of Education to establish a temporary retirement incentive program and contained provisions regarding participation in the program, see subchapter III of chapter 12 of Title 31, § 31-2171 et seq.

§ 1-627.2. Retirement systems.

Existing retirement systems, which include the Civil Service Retirement System (Chapter 83 of Title 5 of the United States Code), Teachers' Retirement System, Police and Fire Retirement System, Teachers' Insurance and Annuity Association programs, and the Judges' Retirement System, shall continue to be applicable to all employees except that the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 shall not be applicable to employees first employed after September 30, 1987. (1973 Ed., § 1-356.2; Mar. 3, 1979, D.C. Law 2-139, § 2602, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(ee), 27 DCR 2632; Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 10(a), 35 DCR 147.)

Emergency act amendments. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act," was introduced in council and assigned Bill No. 11-316, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective April 9, 1997.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 7-104. — See note to § 1-604.8.

Retirement incentive eligibility. — Section 101 of D.C. Law 11-98 requires the Mayor to identify and submit to the Council a list of which positions can be made eligible for certain retirement incentive programs.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995. — Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Establishment of Pension Benefit Committee. — See Mayor's Order 89-235, October 5, 1989.

Cited in American Fed'n of Gov't Employees v. Barry, App. D.C., 459 A.2d 1045 (1983).

§ 1-627.3. District retirement benefits.

The District shall provide retirement benefits to all employees first employed after September 30, 1987, who would otherwise have been covered under the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 except those specifically excluded by law or by rule. (Mar. 3, 1979, D.C. Law 2-139, § 2603, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3 and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

Establishment of Pension Benefit Committee. — See Mayor's Order 89-235, October 5, 1989.

§ 1-627.4. Definitions.

For the purpose of §§ 1-627.5 through 1-627.12, the term:

(1)(A) "Creditable service" means the period of employment to be recognized for purposes of eligibility for retirement benefits, which shall be set forth in rules promulgated by the Mayor pursuant to § 1-627.8.

(B) For purposes of vesting pursuant to § 1-627.10(b), creditable service for employees whose participation in the District Defined Contribution Plan ceases as a result of the implementation of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Pub. L. No. 105-33), shall also include continuous service performed by nonjudicial employees of the District of Columbia courts after September 30, 1997, or service performed for a successor employer that provides the services previously performed by the District government toward the vesting requirement of the Defined Contribution Plan.

(2) "Detention officer" means an employee who is not covered by the Police and Fire Retirement System, whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against, or violation of, the laws of the United States or the District and whose duties may require frequent contact, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals in detention. The term "detention officer" includes:

(A) Employees engaged in the activities listed above who are transferred to a supervisory or administrative position;

(B) Employees of the District of Columbia Department of Corrections, its industries, and utilities who are engaged in the activities listed above;

(C) Employees of the Department of Human Services who are engaged in the activities listed above; and

(D) Members of the Board of Parole, parole officers, and probation officers who are engaged in the activities listed above.

(3) "Employee" means an individual first employed by the government of the District after September 30, 1987, who would have been covered by the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 had the employee been first employed prior to October 1, 1987.

(4) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.).

(5)(A) “Fiduciary” means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to the District retirement benefits program:

(i) Exercises any discretionary authority or discretionary control respecting management of the Section 401(a) Trust established by § 1-627.11 or exercises any discretionary authority or discretionary control respecting management of the Trust’s assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Trust, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of the Trust.

(B) If any money or other property of the Trust is invested in securities issued by an investment company registered under An Act to provide for the registration and regulation of investment companies and investment advisers, and for other purposes (15 U.S.C. § 80a-1 et seq.), that investment shall not by itself cause the investment company or the investment company’s adviser or principal underwriter to be deemed a fiduciary or a party in interest as those terms are defined in this chapter. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law.

(6) The term “party in interest” means:

(A) Any person having fiduciary responsibilities to the Trust;

(B) Any person providing services to the Trust;

(C) The government of the District of Columbia;

(D) An employee organization recognized as an exclusive representative of any participants in the Trust for purposes of collective bargaining pursuant to § 1-618.10; and

(E) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(7) The term “Trust” shall mean the Section 401(a) Trust established by § 1-627.11. (Mar. 3, 1979, D.C. Law 2-139, § 2604, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; May 10, 1989, D.C. Law 7-231, § 3(3), 36 DCR 492; Mar. 24, 1990, D.C. Law 8-97, § 3(e), 37 DCR 1046; Feb. 5, 1994, D.C. Law 10-68, § 6, 40 DCR 6311; Apr. 29, 1998, D.C. Law 12-92, § 2, 45 DCR 1314.)

Section references. — This section is referred to in §§ 1-612.3, 1-3001, 31-2818, and 31-2853.17.

Effect of amendments. — D.C. Law 12-92 added (1)(B).

Emergency act amendments. — For temporary amendment of section, see § 2 of the Defined Contribution Transition Vesting Emergency Amendment Act of 1997 (D.C. Act 12-154, September 29, 1997, 44 DCR 5793), and see § 2 of the Defined Contribution Transition Vesting Clarification Emergency Amendment Act of 1997 (D.C. Act 12-215, December 5, 1997, 44 DCR 7618).

For temporary amendment of D.C. Law 12-

57, see § 3 of the Defined Contribution Transition Vesting Clarification Emergency Amendment Act of 1997 (D.C. Act 12-215, December 5, 1997, 44 DCR 7618).

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 7-231. — See note to § 1-612.11.

Legislative history of Law 8-97. — See note to § 1-627.13.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first

and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 12-57. — Law 12-57, the “Defined Contribution Transition Vesting Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-378. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 21, 1997, it was assigned Act No. 12-180 and transmitted to both Houses of Congress for its review. D.C. Law 12-57 became effective on March 18, 1998.

Legislative history of Law 12-92. — Law 12-92, the “Defined Contribution Transition Vesting Clarification Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-407, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-265 and transmitted to both Houses of Congress for its review. D.C. Law 12-92 became effective on April 29, 1998.

Cited in *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 1-627.5. District retirement benefits program.

The retirement benefits program of the District shall consist of:

(1) A defined benefit plan, as provided in 42 U.S.C. § 301 et seq. (“Social Security Act”);

(2) An employee deferred compensation plan pursuant to § 457 of the Internal Revenue Code governed by Chapter 36 of Title 47; and

(3) A defined contribution plan pursuant to § 401(a) of the Internal Revenue Code. (Mar. 3, 1979, D.C. Law 2-139, § 2605, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 10(b), 35 DCR 147.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, 1-627.6, 1-627.7, 1-627.8, 1-627.9, 1-627.10, 1-627.11, 1-627.12, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 7-104. — See note to § 1-604.8.

References in text. — Section 457 of the

Internal Revenue Code, referred to in paragraph (2), is classified as 26 U.S.C. § 457.

Section 401(a) of the Internal Revenue Code, referred to in paragraph (3), is classified as 26 U.S.C. § 401(a).

Establishment of Pension Benefit Committee. — See Mayor’s Order 89-235, October 5, 1989.

§ 1-627.6. Contracting authority.

The Mayor may select 1 or more contractors to provide services as may be part of the defined contribution plan under § 1-627.5(3). Any contract under § 1-627.5(2) and (3) shall be in accordance with the provisions of Chapter 11A of this title. (Mar. 3, 1979, D.C. Law 2-139, § 2606, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

Establishment of Pension Benefit Committee. — See Mayor’s Order 89-235, October 5, 1989.

§ 1-627.7. Eligibility.

(a) An employee is eligible to participate in the deferred compensation plan under § 1-627.5(2) upon commencement of employment with the District.

(b) An employee is eligible to participate in the defined contribution plan under § 1-627.5(3) upon the completion of 1 year of employment with the District. (Mar. 3, 1979, D.C. Law 2-139, § 2607, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-627.8. Rules; eligibility.

(a) In order to ensure proper implementation of the District retirement program under § 1-627.5 by October 1, 1987, the Mayor may issue temporary rules regarding the District retirement program that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of this title, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules shall prescribe the time, manner, and conditions under which employees are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, and employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of hazardous nature of employment. (Mar. 3, 1979, D.C. Law 2-139, § 2608, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

Approval in part and disapproval in part proposed rules for defined Contribution Pension Plan. — Pursuant to Resolution 8-127, the “Defined Contribution Pension Plan

Rules Approval or Disapproval Resolution of 1989”, effective November 7, 1989, the Council approved in part and disapproved in part proposed rules for defined Contribution Pension Plan established by the District of Columbia Government Comprehension Merit Personnel Act of 1978, which were transmitted to the Council by the Mayor on July 14, 1989.

§ 1-627.9. Contributions.

(a) The District and each employee shall contribute to the defined benefit plan under § 1-627.5(1) the social security amounts mandated by federal law.

(b) Each employee may voluntarily contribute to the deferred compensation plan under § 1-627.5(2) in amounts not exceeding the limits set by § 457 of the Internal Revenue Code.

(c) The District shall contribute an amount equal to not less than 5% of the base salary of each employee participating in the defined contribution plan under § 1-627.5(3). The District contribution shall be made not less frequently than quarterly and shall be placed in the Section 401(a) Trust established by § 1-627.11.

(d) In addition to the contribution under subsection (c) of this section, the District shall contribute no less than an additional .5% of a detention officer's base salary to the Section 401(a) Trust established by § 1-627.11. The contribution shall be made not less frequently than quarterly. (Mar. 3, 1979, D.C. Law 2-139, § 2609, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(e), 37 DCR 6721; Apr. 9, 1997, D.C. Law 11-198, § 301(b), 43 DCR 4569.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Effect of amendments. — D.C. Law 11-198 substituted "5%" for "7%" in (c).

Temporary amendment of section. — Section 301(b) of D.C. Law 11-226 inserted a new subsection (b-1) and amended (c) to read as follows:

"(b-1) Each employee participating in the defined contribution plan may voluntarily contribute a portion of his or her salary to the defined contribution plan under § 1-627.5(3).

"(c) The District shall contribute an amount equal to not less than 5% of the base salary of each employee participating in the defined contribution plan under § 1-627.5(3). The District contribution shall be made not less frequently than quarterly and shall be placed in the Section 401(a) Trust established by § 1-627.11."

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For tem-

porary amendment of section, see § 301(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for the application of the act.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 8-190. — See note to § 1-622.14.

Legislative history of Law 11-198. — See note to § 1-612.10.

Legislative history of Law 11-226. — See note to § 1-612.10.

References in text. — Section 457 of the Internal Revenue Code referred to in subsection (b) of this section is classified as 26 U.S.C. § 457.

Application of provisions of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Mayor authorized to enter agreements to modify health benefits contracts. — See note to § 1-612.3.

§ 1-627.10. Vesting.

(a) The employee's contribution to the deferred compensation plan under § 1-627.5(2) and the earnings on those contributions shall vest immediately.

(b) The District's contributions to the defined contribution plan under § 1-627.5(3) and the earnings on the District's contributions shall vest when an employee completes 5 years of creditable service with the District, dies, or becomes entitled to disability benefits under the Social Security Act.

(c) The employee's interest in the benefits in the defined contribution plan shall be forfeited upon separation from employment if separation occurs prior

to completion of 5 years of creditable service. An employee in a defined contribution plan under § 1-627.5(3) who is removed or suspended without pay and later reinstated or restored to duty on the grounds that the removal or suspension was unwarranted or unjustified shall be entitled to resume immediately participation in the defined contribution plan, with appropriate increases made in the Section 401(a) Trust to reflect the District contributions that would have been made had the employee not been removed or suspended. An employee who is otherwise separated from employment and is later reinstated to employment with the District within 1 year of separation shall be entitled to immediately resume participation in the defined contribution plan. (Mar. 3, 1979, D.C. Law 2-139, § 2610, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

§ 1-627.10a. Vesting under previous District of Columbia retirement program.

For purposes of vesting pursuant to § 1-627.10(b), creditable service with the District for employees whose participation in the District Defined Contribution Plan ceases as a result of the implementation of the Balanced Budget Act of 1997 shall include:

(1) Continuous service performed by nonjudicial employees of the District of Columbia courts after September 30, 1997; and

(2) Service performed for a successor employer, including the Department of Justice or the District of Columbia Offender Supervision, Defender, and Courts Services Agency established under § 24-1233, that provides services previously performed by the District government. (Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 802(b).)

§ 1-627.11. Establishment and administration of Section 401(a) Trust.

(a) There shall be established an irrevocable trust called the Section 401(a) Trust, that shall be managed so as to be exempt from income tax under § 501(a) of the Internal Revenue Code. The funds contributed by the District under the defined contribution plan of § 1-627.5(3) shall be placed in the Section 401(a) Trust. The assets of the Section 401(a) Trust shall be administered by the Mayor.

(b) The cost of any contract for provisions of services as may be part of the defined contribution plan under § 1-627.5(3) shall be paid solely from the assets of the Section 401(a) Trust or from a fund or funds established to administer the defined contribution plan.

(c) Repealed. (Mar. 3, 1979, D.C. Law 2-139, § 2611, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Mar. 7, 1991, D.C. Law 8-220, § 3, 38 DCR 199; Apr. 18, 1996, D.C. Law 11-110, § 3, 43 DCR 530.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, 1-627.9, 1-3001, and 47-351.1.

Legislative history of Law 7-27. — See note to § 1-622.2.

Legislative history of Law 8-220. — Law 8-220 was introduced in Council and assigned Bill No. 8-558, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-303 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

References in text. — Section 501(a) of the Internal Revenue Code referred to in subsection (a) of this section is classified as 26 U.S.C. § 501(a).

§ 1-627.12. Payment of benefits.

The payment of benefits under the retirement programs under § 1-627.5(2) and (3) shall be in accordance with the applicable provisions of §§ 401(a) and 457 of the Internal Revenue Code. (Mar. 3, 1979, D.C. Law 2-139, § 2612, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-612.3, 1-627.4, and 1-3001.

Legislative history of Law 7-27. — See note to § 1-622.2.

References in text. — Sections 401(a) and 457 of the Internal Revenue Code referred to in this section are classified as 26 U.S.C. §§ 401(a) and 457, respectively.

§ 1-627.13. Duties and liabilities of Trustee; exemptions; violations and sanctions.

(a) A fiduciary shall discharge his duties with respect to the Trust solely in the interest of the participants and beneficiaries and:

(1) For the exclusive purpose of providing benefits to participants and beneficiaries;

(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) By diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) In accordance with the provisions of law, documents, and instruments governing the retirement program to the extent that the documents and instruments are consistent with this chapter.

(b) In addition to any liability which he may have under any other provision of this section, a fiduciary with respect to the Trust shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the Trust:

(1) If he knowingly participates in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing the act or omission is a breach of fiduciary responsibility;

(2) If, by his failure to discharge the responsibilities which give rise to his status as a fiduciary, he has enabled the other fiduciary to commit a breach of fiduciary responsibility; or

(3) If he has knowledge of a breach of fiduciary responsibility by the other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(c) Except as provided in subsections (f), (g), and (h) of this section, a fiduciary with respect to the Trust shall not cause the Trust to engage in a transaction, if he knows or should know that the transaction constitutes a direct or indirect:

(1) Sale or exchange, or leasing, of any property between the Trust and a party in interest;

(2) Lending of money or other extension of credit between the Trust and a party in interest;

(3) Furnishing of goods, services, or facilities between the Trust and a party in interest;

(4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the Trust.

(d) Except as provided in subsection (h) of this section, a fiduciary with respect to the Trust shall not:

(1) Deal with the assets of the Trust in his own interest or for his own account;

(2) In his individual or in any other capacity act in any transaction involving the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust or the interests of its participants or beneficiaries; or

(3) Receive any consideration for his own personal account from any party dealing with the Trust in connection with a transaction involving the assets of the Trust.

(e) A transfer of real or personal property by a party in interest shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the Trust assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of the transfer.

(f) The prohibitions provided in subsection (c) of this section shall not apply to any of the following transactions:

(1) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Trust, if no more than reasonable compensation is paid for it;

(2) The investment of all or part of the Trust's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a state (including the District), if such bank or other institution is a fiduciary of the Trust and if the investment is expressly authorized by the Mayor or by a fiduciary (other than the bank or institution or an affiliate) who is expressly empowered by the Mayor to make such investment;

(3) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or any state (including the District) if the bank or other institution is a fiduciary of the Trust and if:

(A) The bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of the ancillary service is consistent with sound banking and financial practice, as determined by federal or state supervisory authority; and

(B) The extent to which the ancillary service is provided is subject to specific guidelines issued by the bank or similar financial institution (as determined by the Mayor after consultation with federal and state supervisory authority), and adherence to the guidelines would reasonably preclude the bank or similar financial institution from providing the ancillary service (i) in an excessive and unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of the retirement program. The ancillary services shall not be provided for more than reasonable compensation;

(4) The exercise of a privilege to convert securities, but only if the Trust receives no less than adequate consideration pursuant to the conversion; or

(5) Any transaction between the Trust and a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a state (including the District) or a federal agency, or a pooled investment fund of an insurance company qualified to do business in a state, if:

(A) The transaction is a sale or purchase of an interest in the Trust;

(B) The bank, trust company, or insurance company receives not more than reasonable compensation; and

(C) The transaction is expressly permitted by the Mayor, or by a fiduciary (other than the bank, trust company, insurance company, or any affiliate) who has authority to manage and control the assets of the Trust.

(g) Nothing in subsection (c) of this section shall be construed to prohibit any fiduciary from:

(1) Receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement program, so long as the benefit is computed and paid on a basis which is consistent with the terms of the retirement program as applied to all other participants and beneficiaries;

(2) Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with respect to the Trust; or

(3) Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(h) The Mayor may submit to the Council for its approval by resolution proposed exemptions from all or part of the restrictions imposed by subsections (c) and (d) of this section. The Mayor shall only request exemptions that have been granted by the United States Secretary of Labor. Any proposed exemption submitted to the Council shall be accompanied by written findings by the Mayor that the proposed exemption is administratively feasible, in the best interests of the Trust and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Trust.

(i)(1) Any person who is a fiduciary with respect to the Trust who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this section shall be personally liable to make good to the Trust any losses to the Trust resulting from each breach and to restore to the Trust any profits of the fiduciary which have been made through the use of assets of the Trust by the fiduciary and shall be subject to whatever other equitable or remedial relief the court may deem appropriate, including removal of the fiduciary.

(2) No fiduciary shall be liable with respect to a breach of fiduciary duty under this section if the breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(3) No action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this section later than 3 years from the date the plaintiff knew or should have known of the alleged breach, except that in the case of fraud or concealment, the action may be commenced not later than 6 years after the date of the plaintiff's discovery of the alleged breach or violation. (Mar. 3, 1979, D.C. Law 2-139, § 2613, as added Mar. 24, 1990, D.C. Law 8-97, § 3(f), 37 DCR 1046.)

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

§ 1-627.14. Civil actions.

A civil action may be brought by a participant or a beneficiary of the Trust, or by the District, to enjoin any act or practice that violates any provision of this chapter or the terms of the retirement program, and for other appropriate legal and equitable relief. In any action under this chapter, the court in its discretion may allow the prevailing party, other than the District, a reasonable attorney fee and costs of action. (Mar. 3, 1979, D.C. Law 2-139, § 2614, as added Mar. 24, 1990, D.C. Law 8-97, § 3(f), 37 DCR 1046.)

Legislative history of Law 8-97. — See note to § 1-627.13.

Subchapter XXVIII. Temporary Assignment of District Employees.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-628.1. Policy.

(a) The District government recognizes that intergovernmental and private sector cooperation are essential factors in resolving problems affecting the District and that the temporary assignment of personnel between and among governmental agencies, at the same or different levels of government, private

sector organizations, and institutions of higher education, is a significant factor in achieving such cooperation.

(b) Any agency is authorized to participate in a program of personnel interchange with private sector organizations, institutions of higher education, or agencies of federal, state, and local governments; provided, however, that the period of original assignment cannot exceed 2 years, but with the concurrence of the agencies or organizations and the employee involved, the assignment period may be extended in increments of one year. (1973 Ed., § 1-357.1; Mar. 3, 1979, D.C. Law 2-139, § 2701, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(a), 43 DCR 5.)

Section references. — This section is referred to in § 1-628.2.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

§ 1-628.2. Status of District employees while on assignment.

(a) Any employee of a District agency participating in an exchange of personnel as authorized in § 1-628.1 may be considered, during such participation, to be:

(1) On detail to regular work assignments of the receiving agency or organization; or

(2) In a status of leave of absence from his or her position in the sending agency.

(b) Any employee who is on detail is entitled to the same salary and benefits to which he or she would otherwise be entitled and shall remain an employee of the sending agency for all other purposes except that the supervision of duties during the period of detail may be governed by agreement between the sending agency and the receiving agency or organization.

(c) An employee who is on a leave of absence is entitled to at least the same salary and benefits to which he or she would otherwise be entitled. The salary and benefits shall be paid by the receiving agency or organization except as otherwise agreed between the sending and the receiving agencies or organizations.

(d) The receiving agency or organization may grant annual leave or other time off with compensation to the extent authorized by law applicable to the sending agency.

(e) Except as otherwise provided in this chapter, an employee who is on a status of leave of absence has the same rights, benefits and obligations as any other employee of the sending agency who is on a leave of absence status for any other purpose.

(f) Any employee who participates in a temporary assignment under this subchapter and who suffers disability or death as a result of personal injury arising out of and in the course of the assignment, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the District's disability compensation program, as an employee who has sustained such injury in the performance of such duty, but shall not receive disability or

injury benefits under that program for any period for which he or she is entitled to and elects to receive similar benefits under the employee compensation of the receiving agency or organization. (1973 Ed., § 1-357.2; Mar. 3, 1979, D.C. Law 2-139, § 2702, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(b), 43 DCR 5.)

Section references. — This section is referred to in § 31-2711.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

§ 1-628.3. Status of employees of other governments or organizations.

(a) When any agency of the District acts as a receiving agency, employees of the sending agency or organization who are assigned under authority of this subchapter may:

(1) Be given appointments in the receiving agency covering the periods of such assignments with compensation to be paid from the receiving agency funds or without compensation; or

(2) Be considered to be on detail to the receiving agency.

(b) The appointment of an employee of another government or organization, assigned to a District agency, may be made without regard to the laws or rules and regulations governing the selection of employees in the Career and Educational Services.

(c) An employee of another government or organization who is detailed to a District agency may not by virtue of the detail be considered to be an employee of the District, except as provided in this section, nor may he or she be directly paid a salary or wage by the District agency. The assignment agreement may, however, authorize the District agency to reimburse the sending agency or organization for all or any part of the employee's salary and fringe benefits. The agreement between the sending agency or organization and the receiving agency may govern the supervision of the duties of such employees during the period of detail.

(d) The District government shall treat any employee of a sending agency or organization assigned to the District who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties, as a District employee for the purpose of the District's employee disability compensation program. An employee of a sending agency or organization is not entitled to benefits under that program for any period for which he or she elects similar benefits under the employee compensation program of his or her permanent employer. (1973 Ed., § 1-357.3; Mar. 3, 1979, D.C. Law 2-139, § 2703, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(c), 43 DCR 5.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

§ 1-628.4. Travel expenses.

(a) A District agency may, in accordance with the applicable travel rules and regulations, pay the travel expenses of an employee assigned to another government, private sector organization, or institution of higher education on either a detail or leave basis, but shall not pay the travel expenses of any employee incurred in connection with his or her work assignment at the receiving agency. If the assignment will be for a period of time exceeding 9 months, travel expenses may include expenses of transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency. If the period of assignment is less than 9 months, the District agency may pay a daily allowance to the employee on assignment or detail.

(b) A District agency may, in accordance with the applicable travel rules and regulations, pay travel expenses of a person assigned to it under this subchapter during the period of such an assignment on the same basis as if he or she were a regular employee of the District.

(c) The costs associated with travel, relocation, and daily expenses may be shared by the participating governments, private sector organization, or institution of higher education or be borne solely by either party to the agreement. (1973 Ed., § 1-357.4; Mar. 3, 1979, D.C. Law 2-139, § 2704, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(d), 43 DCR 5.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 11-78. — See note to § 1-625.5.

§ 1-628.5. Agreements authorized.

(a) Any assignment entered into by a District agency under the authority of this subchapter must be implemented by a written agreement and this agreement shall contain the following provisions:

(1) The signature of the employee to be assigned indicating he or she fully concurs in the assignment and has been made aware of all appropriate rules and regulations governing the assignment;

(2) The approval of appropriate officials of the sending and receiving agencies or organizations;

(3) The terms and conditions for the payment of salary and other expenses, and any reimbursement among participating agencies or organizations; and

(4) The duties and responsibilities to be carried out on the assignment.

(b) The agreement must be signed by all participants before the assignment can become effective. (1973 Ed., § 1-357.5; Mar. 3, 1979, D.C. Law 2-139, § 2705, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(e), 43 DCR 5; Apr. 9, 1997, D.C. Law 11-255, § 55(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction to § 1101(e) of D.C. Law 11-98 with no effect on the text of this section.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 11-78. — See note to § 1-625.5.

Legislative history of Law 11-98. — See note to § 1-625.5.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Subchapter XXIX. Agreements Authorized.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-629.1. Authority.

The Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia are hereby authorized and empowered to enter into reciprocal agreements for the use of equipment, materials, facilities, and services with any public or private agency or body for purposes deemed beneficial to the personnel system. For the purposes of agreements with federal agencies under this subchapter, the provisions of § 1-1131.1 shall be met. (1973 Ed., § 1-358.1; Mar. 3, 1979, D.C. Law 2-139, § 2801, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(aa), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(z), 43 DCR 2978.)

Section references. — This section is referred to in § 1-632.8.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-177. — See note to § 1-601.2.

Legislative history of Law 11-152. — See note to § 1-602.2.

Repeal of § 3 of Law 6-177. — Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-629.2. Agreements required.

The Mayor shall enter into an agreement with the United States Civil Service Commission to carry out the purposes of subchapters XXII, XXIII, and XXVII of this chapter. (1973 Ed., § 1-358.2; Mar. 3, 1979, D.C. Law 2-139, § 2802, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-629.3. Courts.

The Public Employee Relations Board is authorized to enter into agreements with the courts of the District of Columbia to implement a positive program of employee-employer relations. (1973 Ed., § 1-358.3; Mar. 3, 1979, D.C. Law 2-139, § 2803, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-629.4. Transit Commission.

The Mayor is hereby authorized and empowered to enter into an agreement with the Washington Metropolitan Area Transit Commission to implement the inclusion of the employees of such Commission as participants in the United States Civil Service Retirement System (Chapter 83 of Title 5 of the United States Code). (1973 Ed., § 1-358.4; Mar. 3, 1979, D.C. Law 2-139, § 2804, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-629.5. Agreements for disciplinary appeals.

The Mayor is authorized to enter into agreements with appropriate federal agencies to authorize them to continue the processing of administrative appeals of personnel actions by District government employees until such time as the rules and regulations of the Office of Employee Appeals are issued and the provisions of subchapter XVII of this chapter become effective. The agreement of the Mayor may provide for the existing standards of cause for disciplinary actions to continue in effect for the duration of the agreement. (Aug. 7, 1980, D.C. Law 3-81, § 2(ff), 27 DCR 2632.)

Legislative history of Law 3-81. — See note to § 1-602.2.

Subchapter XXX. Employee Debt Set-Offs.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-630.1. Waiver of claims for erroneous employees payments.

(a) In accordance with rules issued by the Mayor, the Mayor may waive with written justification, in whole or part, a claim of the government against an employee or former employee of the District arising under § 1-630.2 when collection would be:

- (1) Against equity;
- (2) Against good conscience; and
- (3) Not in the best interests of the District.

(b) The authority to waive a claim for erroneous payment may not be exercised if there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, former employee, or any other person having an interest in obtaining a waiver of the claim.

(c) After the expiration of 3 years immediately following the date on which the erroneous payment was discovered by the government, or 3 years immediately following March 3, 1979, whichever is later, the Mayor may not make any claim for an erroneous payment or debt owed to the government, except

where the claim involves money owed for federal health benefits, federal life insurance, or United States civil service retirement.

(d) A decision by the Mayor to deny a waiver of the government's claim for erroneous employee payment shall be the final administrative decision of the District government.

(e) When the government has been reimbursed for a claim for erroneous payment in whole or in part, and a waiver of the claim is then granted, the employee or former employee shall be entitled to a refund of the amount of the reimbursement.

(f) An erroneous payment, the collection of which is waived under this subchapter, is a valid payment for all purposes.

(g) Nothing contained in this subchapter shall be construed to affect in any way the authority under any other statute to litigate, settle, compromise, or waive any claim of the government. (1973 Ed., § 1-359.1; Mar. 3, 1979, D.C. Law 2-139, § 2901, 25 DCR 5740; Sept. 13, 1986, D.C. Law 6-144, § 2(b), 33 DCR 4383; June 10, 1998, D.C. Law 12-124, § 101(y), 45 DCR 2464.)

Effect of amendments. — D.C. Law 12-124 rewrote (d).

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 6-144. — See note to § 1-630.2.

Legislative history of Law 12-124. — See note to § 1-603.1.

Applicability of § 101(y) of D.C. Law 12-124. — Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-630.2. Erroneous payments to employees.

When the Mayor determines that an employee or former employee of the District is indebted to the District of Columbia government ("government") because of an erroneous payment made to or on behalf of the employee, the Mayor may, after 30 days notice to the employee, collect the amount of the indebtedness as provided in this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 2902, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Section references. — This section is referred to in § 1-630.1.

Legislative history of Law 6-144. — Law 6-144 was introduced in Council and assigned Bill No. 6-177, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-186 and transmitted to both Houses of Congress for its review.

§ 1-630.3. Employee debts to District government.

(a) Whenever an employee or former employee of the District is indebted to the government for other than an erroneous payment and the debt has either been acknowledged by the employee or reduced to judgment by a court, the Mayor may, after 30 days notice to the employee, collect the amount of the indebtedness as provided in this subchapter.

(b) The Mayor shall identify all debts owed to the government by an employee or former employee that have not been acknowledged by the employee or reduced to a judgment by a court, and the names of the employees,

the amount of the debt, and supporting documentation shall be forwarded to the Corporation Counsel for appropriate action. (Mar. 3, 1979, D.C. Law 2-139, § 2903, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Legislative history of Law 6-144. — See note to § 1-630.2.

§ 1-630.4. Collection of debts.

(a) Any debt authorized to be collected under this subchapter may be collected in monthly installments or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay of the employee.

(b) Deductions may be made from any wages, salary, compensation, remuneration for services, or other authorized pay, including, but not limited to, back pay and lump sum leave payments but not including retirement pay.

(c) The amount deducted for any period may not exceed 20% of disposable pay, except that a greater percentage may be deducted upon consent of the employee involved.

(d) If the employee's employment ends before collection of the amount of the indebtedness is completed, deductions may be made from later non-periodic government payments of any nature except retirement pay due the former employee without regard to the limit imposed by subsection (c) of this section. (Mar. 3, 1979, D.C. Law 2-139, § 2904, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Legislative history of Law 6-144. — See note to § 1-630.2.

Subchapter XXXI. Elimination of Personal Surety Bonds for District Employees.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-631.1. Policy; agency may not require bonds.

(a) No agency may require or obtain surety bonds for any employee in connection with the performance of official duties.

(b) The personal financial liability to the District government of such employees and personnel is not affected by reason of subsection (a) of this section.

(c) Whenever the following occurs: (1) It is necessary to restore or otherwise adjust the account of an accountable officer or his or her agent for any loss to the District due to the fault or negligence of that officer or agent; and (2) the head of that agency determines that the amount of the loss is uncollectable, such amount shall be charged to the appropriation of funds available for the expenses of the accountable function at the time the restoration or adjustment is made. The restoration or adjustment does not affect the personal financial liability of that officer or agent on account of the loss.

(d) The restorations and adjustments provided for by subsection (c) of this section shall be made in accordance with rules and regulations issued by the Mayor. (1973 Ed., § 1-360.1; Mar. 3, 1979, D.C. Law 2-139, § 3001, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter XXXII. Records Management and Privacy of Records.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-632.1. Policy; issuance of rules and regulations.

All official personnel records of the District government shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy while providing adequate, necessary, and complete information for the District to carry out its responsibilities under this chapter. Such records shall be established, maintained, and disposed of in accordance with rules and regulations issued by the Mayor. (1973 Ed., § 1-361.1; Mar. 3, 1979, D.C. Law 2-139, § 3101, 25 DCR 5740.)

Section references. — This section is referred to in § 1-632.7.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.2. Cooperation with the United States Civil Service Commission.

Because of the statutory and administrative relationships in personnel administration between the District and federal governments, and to ensure that personnel records include information of importance to both governmental jurisdictions, the rules and regulations issued by the Mayor shall, insofar as is practicable, be consistent with civil service rules and regulations governing personnel records management in the federal service. (1973 Ed., § 1-361.2; Mar. 3, 1979, D.C. Law 2-139, § 3102, 25 DCR 5740.)

Section references. — This section is referred to in § 1-632.8.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.3. Disclosure of personnel information.

It is the policy of the District government to make personnel information in its possession or under its control available upon request to appropriate personnel and law-enforcement authorities, except if such disclosure would constitute an unwarranted invasion of personal privacy or is prohibited under law or rules and regulations issued pursuant thereto. (1973 Ed., § 1-361.3; Mar. 3, 1979, D.C. Law 2-139, § 3103, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.4. Rules and regulations affecting disclosure.

The Mayor shall issue rules and regulations governing the disclosure of official information contained in personnel records. (1973 Ed., § 1-361.4; Mar. 3, 1979, D.C. Law 2-139, § 3104, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.5. Employee access to official personnel record.

(a)(1) The official personnel record of a District employee shall be disclosed to the employee or any representative of his or her choice. All such disclosure shall be made in the presence of a representative of the agency having custody of the records.

(2) The following information which may be in an official personnel record shall not be disclosed to any employee:

(A) Information which has been received on a confidential basis from a person under an agreement that the identity of the source of the information will not be disclosed: Provided, however, that such information may be disclosed if all information identifying the source of the information is deleted in such a manner to positively preclude identity of the source;

(B) Medical information, which, in the judgment of the employee's physician would be injurious to the health of the employee, if disclosed;

(C) Criminal investigative reports;

(D) Suitability inquiries and confidential questionnaires undertaken in accordance with rights afforded under this chapter; and

(E) Test and examination materials which may continue to be used for selection and promotion purposes: Provided, however, that the description of test and general results thereof shall be disclosed.

(b) Each employee shall have the right to present information immediately germane to any information contained in his or her official personnel record and seek to have irrelevant, immaterial, or untimely information removed from the record.

(c) For the purpose of this subchapter, information other than a record of official personnel action is untimely if it concerns an event more than 3 years in the past upon which an action adverse to an employee may be based. Immaterial, irrelevant, or untimely information shall be removed from the official record upon the finding by the agency head that the information is of such a nature. Prior to the removal of any information in the file, the employer shall notify the employee and give him or her an opportunity to be heard. (1973 Ed., § 1-361.5; Mar. 3, 1979, D.C. Law 2-139, § 3105, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.6. Appeals.

Repealed.

(1973 Ed., § 1-361.6; Mar. 3, 1979, D.C. Law 2-139, § 3106, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(z), 45 DCR 2464.)

Legislative history of Law 12-124. — See note to § 1-603.1.

§ 1-632.7. Transfer of official personnel folders.

The system for the maintenance of the official personnel folder established under § 1-632.1 shall provide for the transfer of folders between agencies of the District government subject to this chapter when employees transfer from 1 agency to another. (1973 Ed., § 1-361.7; Mar. 3, 1979, D.C. Law 2-139, § 3107, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-632.8. Exchange of official personnel information.

The Mayor, pursuant to the provisions of §§ 1-629.1 and 1-632.2, shall enter into an agreement with the United States Civil Service Commission for the exchange of official personnel information, to the extent mutually agreed upon, between the District and federal government in accordance with limitations imposed by this subchapter. (1973 Ed., § 1-361.8; Mar. 3, 1979, D.C. Law 2-139, § 3108, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

*Subchapter XXXIII. Implementation; Conforming Amendments
and Repealers; Specific Retention of Laws and Authorities;
Rules of Construction.*

§ 1-633.1. Continuation of personnel rules and regulations.

(a) All personnel rules and regulations, issued under appropriate authority on or before the date that this section becomes effective as provided in subsection (b) of § 1-637.1, shall continue in full force and effect until superseded by a provision of this chapter. All administrative directives of whatever name issued by any personnel authority or the Chiefs of the Metropolitan Police Department or the District of Columbia Fire Department in effect on the date that this section becomes effective as provided in subsection (b) of § 1-637.1 shall remain in effect until superseded by a provision of this chapter. Such existing rules and regulations may be amended in accordance with existing provisions of law.

(b) Persons employed by the District of Columbia government after March 3, 1979, shall be appointed under existing authority until the provisions of this chapter become effective. (1973 Ed., § 1-362.1; Mar. 3, 1979, D.C. Law 2-139, § 3201, 25 DCR 5740.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Cited in American Fed'n of Gov't Employees

v. Barry, App. D.C., 459 A.2d 1045 (1983); *District of Columbia Metro. Police Dep't v. Broadus*, App. D.C., 560 A.2d 501 (1989); *American Fed'n of Gov't Employees v. District of Columbia*, App. D.C., 563 A.2d 361 (1989).

§ 1-633.2. Specific supersession of existing laws and agreements.

(a) The following provisions of Title 5 of the United States Code are superseded for all employees of the District of Columbia Government:

(1) *General regulations authority.* — Provisions of:

(A) 5 U.S.C. § 1302(b) and (c) (relating to the development of regulations affecting employees of the District of Columbia); and

(B) 5 U.S.C. § 1304(a)(3) (relating to loyalty investigations affecting employees of the District of Columbia);

(2) *General provisions of law relating to employees.* — (A) 5 U.S.C. § 2102(a)(3) (relating to employees of the District of Columbia in the competitive service);

(B) 5 U.S.C. § 2108(3)(E) (relating to certain preferences to veterans for employment with the District of Columbia government); and

(C) 5 U.S.C. § 2905(a) (relating to renewal of oaths by employees of the District government);

(3) *Employment and retention.* — (A) 5 U.S.C. § 3101 (relating to general employment authority of the District of Columbia government);

(B) 5 U.S.C. § 3102(b)(1)(C) and (b)(2) (relating to the employment of readers for blind employees of the District of Columbia government);

(C) 5 U.S.C. § 3108 (relating to the employment of detective agencies by the District of Columbia government);

(D) 5 U.S.C. § 3110(b) (relating to the employment of relatives of incumbents by the District of Columbia government);

(E) 5 U.S.C. §§ 3315(a) and 3316 (relating to the employment of preference eligibles by the District of Columbia government);

(F) 5 U.S.C. § 3320 (relating to the District of Columbia government excepted service);

(G) 5 U.S.C. § 3323(a) (relating to automatic separations and the reemployment of annuitants by the District of Columbia government);

(H) 5 U.S.C. § 3333(a) and (b) (relating to loyalty of and striking against the government by employees of the District of Columbia government);

(I) 5 U.S.C. §§ 3351 and 3363 (relating to transfers and promotion of employees of the District of Columbia government);

(J) 5 U.S.C. § 3504 (relating to retention of preference eligible employees of the District of Columbia government); and

(K) 5 U.S.C. § 3551 (relating to restoration of positions after active or duty training by employees of the District of Columbia government);

(4) *Employee performance*. — (A) 5 U.S.C. §§ 4101(1)(F) and (3), 4301(1)(F) and (2)(D) (relating to training and performance and ratings of employees of the District of Columbia government); and

(B) 5 U.S.C. § 4501(1)(G), (2)(B) and (3) (relating to incentive awards for employees of the District of Columbia government);

(5) *Pay and allowances*. — (A) 5 U.S.C. § 5102(a)(1)(G) (relating to the classification of employees of the District of Columbia government);

(B) 5 U.S.C. § 5307(a)(1) (relating to the fixing of pay by administrative action for certain employees of the District of Columbia government);

(C) 5 U.S.C. § 5337(a)(2) (relating to pay savings provisions for certain general schedule employees of the District of Columbia government);

(D) 5 U.S.C. § 5344(b) (relating to the effective date of wage increases for certain employees of the District of Columbia government);

(E) 5 U.S.C. § 5349(a) (relating to employees in recognized trades and crafts employed by the District of Columbia government);

(F) 5 U.S.C. §§ 5351(1), 5352 and 5353 (relating to student employees employed by the District of Columbia government);

(G) 5 U.S.C. §§ 5504(a)(3), (b)(3)(D), 5506, 5508, 5515, 5521(1)(E), (3)(B), 5522(c), 5523(a)(1)(B), (c), 5527(b), 5531(2), 5532, 5534, 5534a, 5537(a)(2), 5541(1)(G), (2)(B), (2)(C)(ii), (iii), (iv), 5546(b), 5551(a), 5552, 5581(1)(B), (2), 5583(b)(1), 5595(1)(D), (d), (f) and 5596(a)(5) (relating to pay administration for employees of the District of Columbia government);

(H) 5 U.S.C. §§ 5701(1)(E), (5) and 5721(1)(H) and (4) (relating to travel, transportation, and subsistence allowances for employees of the District of Columbia government); and

(I) 5 U.S.C. §§ 5901(a), 5945 and 5946(1) (relating to certain allowances for employees of the District of Columbia government);

(6) *Leave*. — 5 U.S.C. §§ 6101(a)(1), (a)(2), (a)(3), (a)(4), 6103(c), 6104, 6301(2)(B), 6306(a), 6307(a), (c), 6308, 6322(a), (b), 6323, 6324(a), (b)(1), and 6326(a) (relating to attendance and leave provisions for employees of the District of Columbia government);

(7) *Loyalty, striking and civil disorders*. — 5 U.S.C. §§ 7311, 7313(a), and 7351 (relating to loyalty, striking and participation in civil disorders by employees of the District of Columbia government and rendering gifts to supervisors);

(8) *Adverse actions*. — 5 U.S.C. § 7511(1) (relating to adverse actions affecting certain employees of the District of Columbia government);

(9) *Safety programs*. — 5 U.S.C. § 7902(a)(2) (relating to safety programs for employees of the District of Columbia government); and

(10) *Compensation for work injuries*. — 5 U.S.C. §§ 8101(1)(D) and 8139 (relating to workmen's compensation claims for employees of the District of Columbia government).

(b) Notwithstanding the provisions of this subchapter or Title 5 of the United States Code, the Mayor is authorized to establish rates of pay for employees in the Career, Excepted and Executive Services of the District of

Columbia government. Such rates of pay shall be established in accordance with the provisions of subchapter XII of this chapter. (1973 Ed., § 1-362.2; Mar. 3, 1979, D.C. Law 2-139, § 3202, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565; Sept. 26, 1980, D.C. Law 3-109, § 2, 27 DCR 3785; Oct. 5, 1985, D.C. Law 6-43, § 2(b), 32 DCR 4484; Apr. 30, 1988, D.C. Law 7-104, § 36(d), 35 DCR 147.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-14. — See note to § 1-608.1.

Legislative history of Law 3-109. — See note to § 1-617.1.

Legislative history of Law 6-43. — See note to § 1-612.3.

Legislative history of Law 7-104. — See note to § 1-604.8.

References in text. — 5 U.S.C. § 3551, cited in (a)(3)(K), was repealed by the Act of Oct. 13, 1994, P.L. 103-353, § 2(b)(2)(B), 108 Stat. 3169.

5 U.S.C. § 4301(1)(F), cited in subsection (a)(4)(A), does not exist.

5 U.S.C. § 5102(1)(G), referred to in (a)(5)(A), is now 5 U.S.C. § 5102(1)(F).

5 U.S.C. § 4301(2)(D), cited in subsection (a)(4)(A), makes no reference to the District of Columbia.

5 U.S.C. § 5307(a)(1), referred to in (a)(5)(B) is now found at 5 U.S.C. § 5306.

5 U.S.C. § 5337(a)(2), referred to in subsection (a)(5)(C), was repealed by § 801(a)(2) of the Act of October 13, 1978, Pub. L. 95-454, 92 Stat. 221.

5 U.S.C. § 5523(a)(1)(B), referenced in (a)(5)(G), no longer exists in light of the amendment to that section by the Act of Oct. 28, 1991, P.L. 102-138, § 147(a), 105 Stat. 669.

Cited in District of Columbia v. Jones, App. D.C., 442 A.2d 512 (1982); Brown v. Jefferson, App. D.C., 451 A.2d 74 (1982); Hairston v. District of Columbia, 638 F. Supp. 198 (D.D.C. 1986); District of Columbia v. Hunt, App. D.C., 520 A.2d 300 (1987); District of Columbia Metro. Police Dep't v. Broadus, App. D.C., 560 A.2d 501 (1989).

§ 1-633.3. Police officers and fire fighters appointed after the date this chapter becomes effective.

The provisions of this section shall not apply to police officers and fire fighters appointed after the date that this chapter becomes effective as provided in § 1-637.1:

- (1)(A) Section 4-406, note;
- (B) Sections 4-103, 4-104, 4-111, 4-120, 4-121, 4-123, and 4-125;
- (C) Sections 4-122, 4-105, 4-124, 4-125, and 4-126;
- (D) Section 4-106;
- (E) Section 4-108;
- (F) Sections 4-109 and 4-303;
- (G) Section 4-112;
- (H) Sections 4-128 and 4-306;
- (I) Section 4-310;
- (J) Sections 4-179 through 4-183;
- (K) Section 4-184;
- (L) Sections 4-302, 4-304, and 4-307;
- (M) Section 4-305;
- (N) Section 4-308;
- (O) Section 4-309;
- (P) Section 4-601 et seq.;
- (Q) Sections 4-801 through 4-803;

- (R) Section 4-701 et seq.;
- (S) Section 4-407 et seq.;
- (T) Section 4-401;
- (U) Sections 4-402, 4-403, and 4-404 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (V) Section 4-405;
- (W) Sections 4-1102 and 4-1103;
- (X) Section 4-1104 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (Y) Section 4-1105;
- (Z) Sections 4-107, 4-117, and 4-118;
- (AA) Section 4-110;
- (BB) Sections 4-180, 4-181, and 4-182; and
- (CC) Section 4-119.

(2)(A) Reorganization Order 39, June 18, 1953, as amended (relating to fire trial boards); and

(B) Reorganization Order 48, June 26, 1953, as amended (relating to police trial and review boards).

(3) Notwithstanding any other provision of this section, no provision of law affecting the United States Park Police, United States Secret Service Uniformed Division or Secret Service shall be deemed to be affected (1973 Ed., § 1-362.3; Mar. 3, 1979, D.C. Law 2-139, § 3203, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(f), 36 DCR 450.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 7-203. — Law 7-203 was introduced in Council and assigned Bill No. 7-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-274 and transmitted to both Houses of Congress for its review.

References in text. — Section 4-120, referenced in (1)(B), was repealed by D.C. Law 9-145, § 302(a), 39 DCR 4895, effective Sept. 10, 1992.

Cited in Brown v. Jefferson, App. D.C., 451 A.2d 74 (1982).

§ 1-633.4. Express retention of certain District of Columbia laws.

The express provisions of the following District of Columbia laws shall continue in force and are not to be considered impliedly repealed in any manner by the provisions of this chapter:

(1) The provisions of Title 18 of the United States Code insofar as they affect employees of the District of Columbia government shall not be affected by this chapter: Provided, however, that this provision shall not be construed to prohibit coverage of volunteers under the provisions of subchapter XXIV of this chapter;

(2) The provisions of § 1-304 et seq. shall continue in force except that volunteers shall be entitled to disability compensation as provided in subchapter XXIV of this chapter;

- (3) The provisions of §§ 1-504 and 28-2701 shall continue in force;
- (4) Section 1-507 shall continue in force;
- (5) Section 1-2501 et seq. shall continue in force; and
- (6) The Metropolitan Police Officer Civil Rights Act (D.C. Law 2-71). (1973 Ed., § 1-362.4; Mar. 3, 1979, D.C. Law 2-139, § 3206, 25 DCR 5740.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-633.5. Miscellaneous provisions.

(a) Commissioner's Order No. 70-229 (Organization Order No. 25), June 19, 1970; Interim Labor Management Relations Policy for the University of the District of Columbia, May 4, 1978, 24 DCR 1004; Sections 600 through 619 of the Rules of the District of Columbia Board of Education, January 18, 1978, 24 DCR 6445-6475; the September 1975 Armory Board policy relating to labor relations; and any other labor-management relations policy inconsistent with this chapter are deemed to be superseded by this chapter: Provided, however, that nothing herein shall preclude the Mayor, the Board of Trustees of the University of the District of Columbia, the Board of Education, or the Armory Board from adopting new labor relations policies that are not inconsistent with this chapter or with regulations issued by the Public Employee Relations Board pursuant to this chapter.

(b) Any law, rule and regulation, Commissioner's Order, Mayor's Order, Mayor's Memorandum, or any administrative rule and regulation which is inconsistent with or contrary to the provisions of this chapter is repealed or superseded to the extent of such inconsistency on or after the effective date of this chapter.

(c) Any provision of the District Personnel Manual (DPM) which, while not expressly repealed or inconsistent with any provision of this chapter, lacks a statutory basis under this chapter is repealed on the effective date of this chapter.

(d) Notwithstanding any other provision of this chapter, wherever federal merit system standards are applicable to a District program financed in whole or in part by the federal funds, the Mayor shall establish rules and regulations to the extent necessary to apply such standards to personnel administration in such grant-in-aid programs and the positions and employees therein. (1973 Ed., § 1-362.5; Mar. 3, 1979, D.C. Law 2-139, § 3207(a)-(d), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(hh), 27 DCR 2632.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-605.3 and 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

Repeal of preexisting law. — The Comprehensive Merit Personnel Act plainly contemplated that preexisting law might be "repealed or superseded" by its provisions. *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987).

Cited in *Public Defender Serv. v. Saint-Preux*, App. D.C., 691 A.2d 1160 (1997).

§ 1-633.6. Rules of construction.

In accordance with the express terms of this chapter, the following rules of construction will apply in the interpretation of provisions in apparent conflict:

- (1) Subchapter II will govern conflicting provisions; and
- (2) A parenthetical limitation, upon provisions of a section or subchapter preceding it, shall limit the scope of the section or subchapter to the parenthetical provision. (1973 Ed., § 1-362.6; Mar. 3, 1979, D.C. Law 2-139, § 3208, 25 DCR 5740.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

§ 1-633.7. Mayoral nominees.

(a) The Mayor shall nominate persons to serve as subordinate agency heads in the Executive Service established by § 1-611.1, subject to the advice and consent of the Council, within 180 calendar days of the date of the establishment of the subordinate agency or the date of a vacancy. A nomination shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the nomination by resolution within this 90-day review period, the nomination shall be deemed confirmed.

(1) If the Mayor fails to nominate a person within 180 days of the establishment of the subordinate agency vacancy or the date of vacancy, no District funds may be expended to compensate any person serving in the position.

(2) The Mayor may designate an acting subordinate agency head, but this designation shall not suspend the requirements of this section.

(b) The Mayor shall not appoint board or commission members to serve in a position that the law requires to be filled by Mayoral appointment with the advice and consent of the Council.

(c) No person shall serve in a hold-over capacity for longer than 180 days after the expiration of the term to which he or she was appointed, in a position that is required by law to be filled by Mayoral appointment with the advice and consent of the Council including to positions on boards and commissions.

(d) The provisions of this section shall not be affected by any provision in subchapter 8 of Chapter 2 of this title.

(e) Notwithstanding any other provision of law, the Mayor shall transmit to the Council, for a 90-day period of review, excluding days of Council recess, nominations to the boards and commissions listed in paragraphs (1)-(24) of this subsection. If the Council does not approve by resolution within the 90-day period a nomination to these boards or commissions, the nomination shall be deemed disapproved.

(1) The Alcoholic Beverage Control Board, established by § 25-104(a);

(2) The District of Columbia Board of Library Trustees, established by § 37-104;

(3) The Board of Trustees of the University of the District of Columbia, established by § 31-1511;

- (4) The Board of Zoning Adjustment, established by § 5-424;
- (5) The Citizen Complaint Review Board, established by § 4-914;
- (6) The Contract Appeals Board, established by § 1-1189.1;
- (7) The District of Columbia Board of Elections and Ethics, established by § 1-1303;
- (8) The District of Columbia Commission on Human Rights, established by Commission on Human Rights Order, issued July 8, 1971 (C.O. 71-224);
- (9) The Health and Hospitals Public Benefit Corporation Board of Directors, established by § 32-262.3;
- (10) The District of Columbia Housing Finance Agency Board of Directors, established by § 45-2112;
- (11) The District of Columbia Lottery and Charitable Games Control Board, established by § 2-2501;
- (12) The District of Columbia Sports Commission Board of Directors, established by § 2-4004;
- (13) The Historic Preservation Review Board, established by Mayor's Order 83-119, issued May 6, 1983 (30 DCR 3031) in accordance with § 5-1003;
- (14) The Metropolitan Washington Airports Authority Board of Directors, established by § 7-1506(e);
- (15) The National Capital Revitalization Corporation Board, established by § 1-2295.3;
- (16) The Office of Employee Appeals, established by § 1-606.1;
- (17) The Public Employee Relations Board, established by § 1-605.1;
- (18) The Public Service Commission, established by § 43-401;
- (19) The Rental Housing Commission, established by § 45-2511;
- (20) The Washington Convention Center Authority Board of Directors, established by § 9-803;
- (21) The Water and Sewer Authority Board of Directors, established by § 43-1674;
- (22) The Zoning Commission for the District of Columbia, established by § 5-412;
- (23) The Local Business Opportunity Commission, established by § 1-1143;
- (24) The District of Columbia Taxicab Commission, established by § 40-1704.

(f) Notwithstanding any other provision of law, the Mayor shall transmit to the Council, for a 45-day period of review, excluding days of Council recess, nominations to the boards and commissions listed in paragraphs (1)-(35) of this subsection. The Council shall be deemed to have approved a nomination under this subsection if during the 45-day period, no member introduces a resolution disapproving the nomination. If a member introduces a resolution disapproving the nomination within the 45-day period, the Council shall have an additional 45 days, excluding days of Council recess, to disapprove the nomination by resolution, or it will be deemed approved.

- (1) The Apprenticeship Council, established by § 36-402;
- (2) The Armory Board, established by § 2-302;
- (3) The Board of Appeals and Review, established by Mayor's Order 94-115, issued May 9, 1994 (41 DCR 2864);

- (4) The Board of Dentistry, established by § 2-3302.1;
- (5) The Board of Medicine, established by § 2-3302.3;
- (6) The Board of Nursing, established by § 2-3302.4;
- (7) The Board of Nursing Home Administration, established by § 2-3302.5;
- (8) The Board of Psychology, established by § 2-3302.11;
- (9) The Board of Real Property Assessments and Appeals, established by § 47-825.1;
- (10) The Child Support Guideline Commission, established by § 16-916.2;
- (11) The Commission on the Arts and Humanities, established by § 31-2003(a);
- (12) The District of Columbia Boxing and Wrestling Commission, established by § 2-604;
- (13) The Multistate Tax Commission, established by § 47-441;
- (14) The Public Access Corporation Board of Directors, established by § 43-1829;
- (15) The Real Estate Commission of the District of Columbia, established by § 45-1923;
- (16) The Sex Offender Registration Advisory Council, established by § 24-1103;
- (17) The Board of Dietetics and Nutrition, established by § 2-3302.2;
- (18) The Board of Occupational Therapy, established by § 2-3302.6;
- (19) The Board of Optometry, established by § 2-3302.7;
- (20) The Board of Pharmacy, established by § 2-3302.8;
- (21) The Board of Physical Therapy, established by § 2-3302.9;
- (22) The Board of Podiatry, established by § 2-3302.10;
- (23) The Board of Social Work, established by § 2-3302.12;
- (24) The Board of Professional Counseling, established by § 2-3302.13;
- (25) The Board of Respiratory Care, established by § 2-3302.14;
- (26) The Board of Massage Therapy, established by § 2-3302.15;
- (27) The Board of Chiropractic, established by § 2-3302.16;
- (28) The Statewide Health Coordinating Counsel, established by § 32-353;
- (29) The Barber and Cosmetology Board, established by § 2-422;
- (30) The Board of Appraisers, established by § 45-3202;
- (31) The Board of Chiropractic, established by § 2-3302.16;
- (32) The Board of Funeral Directors, established by § 2-2803;
- (33) The Board of Respiratory Care, established by § 2-3302.14;
- (34) The Board of Social Work, established by § 2-3302.12; and
- (35) The Board of Veterinary Examiners, established by § 2-2725.

(g) Notwithstanding any other provision of law, the Mayor shall directly appoint members to boards and commissions, without the advice and consent of the Council, to the boards and commissions not contained in subsections (e) and (f) of this section.

(h) This section shall not apply to positions on boards and commissions that are designated by law for the Mayor, his or her designee, or another member of the executive branch or his or her designee. (1973 Ed., § 1-362.7; Mar. 3,

1979, D.C. Law 2-142, § 2, 25 DCR 6112; Mar. 4, 1981, D.C. Law 3-131, § 802, 28 DCR 326; Mar. 16, 1989, D.C. Law 7-201, § 3, 36 DCR 248; May 10, 1989, D.C. Law 7-231, § 4, 36 DCR 492; Oct. 15, 1993, D.C. Law 10-39, § 2, 40 DCR 5827; Apr. 20, 1999, D.C. Law 12-261, § 1245, 46 DCR 3142; _____, 1999, D.C. Law 12-(Act 12-622), § 2, 46 DCR 1355.)

Section references. — This section is referred to in §§ 1-611.51, 1-1181.5e, 6-133, and 47-2853.7.

Effect of amendments. — D.C. Law 12-261 added the paragraphs designated herein as (f)(37) through (42).

Neither of the 1999 amendments referred to the other, and effect has been given to the changes made by D.C. Law (Act 12-622).

D.C. Law 12-(D.C. Act 12-622) rewrote the section.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

Legislative history of Law 2-142. — Law 2-142 was introduced in Council and assigned Bill No. 2-11, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Vetoed by the Mayor on November 27, 1978, and enacted without signature on December 12, 1978, it was assigned Act No. 2-312 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-201. — See note to § 1-603.1.

Legislative history of Law 7-231. — See note to § 1-612.11.

Legislative history of Law 10-4. — Law 10-4, the “Confirmation Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-172. The Bill was adopted on first and second readings on March 2, 1993, and April 7, 1993, respectively. Approved without the signature of the Mayor on April 30, 1993, it was assigned Act No. 10-22 and transmitted to both Houses of Congress for

its review. D.C. Law 10-4 became effective on June 24, 1993.

Legislative history of Law 10-21. — Law 10-21, the “Confirmation Holdover Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-293. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-53 and transmitted to both Houses of Congress for its review. D.C. Law 10-21 became effective on September 30, 1993.

Legislative history of Law 10-39. — Law 10-39, the “Confirmation Act of 1993,” was introduced in Council and assigned Bill No. 10-148, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 30, 1993, it was assigned Act No. 10-74 and transmitted to both Houses of Congress for its review. D.C. Law 10-39 became effective on October 15, 1993.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 12-(D.C. Act 12-622). — See note to § 1-603.1.

Amendment of Organization Order No. 112, establishing Board of Appeals and Review. — See Mayor’s Order 84-31, February 9, 1984.

Cited in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

Subchapter XXXIV. Appropriations.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-634.1. Authorization of appropriations.

Appropriations necessary to carry out the purposes of this chapter are hereby authorized. (1973 Ed., § 1-363.1; Mar. 3, 1979, D.C. Law 2-139, § 3301, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter XXXV. Annual Report.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-635.1. Annual report.

Repealed. June 10, 1998, D.C. Law 12-124, § 101(aa), 45 DCR 2464.

Historical Citations — The legislative history of this section is as follows:

1973 Ed., § 1-364.1; Mar. 3, 1979, D.C. Law 2-139, § 3401, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3 (bb), 33 DCR 7241.

Legislative history of Law 12-124. — See note to § 1-603.1.

Subchapter XXXVI. Separability.

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 1-636.1. Separability.

Should any provision of this chapter be declared unconstitutional, invalid or beyond the statutory authority of the Council of the District, the remaining provisions of this chapter shall be unaffected by such a declaration. (1973 Ed., § 1-365.1; Mar. 3, 1979, D.C. Law 2-139, § 3501, 25 DCR 5740.)

Legislative history of Law 2-139. — See note to § 1-601.1.

Subchapter XXXVII. Effective Date Provisions; Implementation Task Force.

§ 1-637.1. Effective date provisions.

(a) The provisions of subchapters X (except §§ 1-610.4, 1-610.7, and 1-610.9) and XI of this chapter, subsection (a) of § 1-605.1, subsection (a) of § 1-606.1 and § 1-606.2 shall become effective 15 days after March 3, 1979.

(b) The provisions of § 1-633.1 shall become effective on March 3, 1979.

(c) The provisions of § 1-612.9 shall become effective on March 3, 1979: Provided, however, that such provisions shall only apply to the Mayor, Chairman and members of the Council taking the oath of office after January 1, 1979.

(d) The provisions of § 1-618.17 shall become effective on September 1, 1978, and shall apply to all negotiations for compensation as authorized under § 1-618.16 for compensation to be paid on and after January 1, 1980.

(e) The provisions of § 1-612.13 shall become effective on March 3, 1979, apply retroactively to compensation to be paid as provided therein after September 30, 1978, and expire on September 30, 1980: Provided, however,

that if a collective bargaining agreement concerning compensation is entered into between appropriate personnel authorities (management) and recognized labor organizations for employees of the Metropolitan Police Department, the District of Columbia Fire Department, or the District of Columbia Board of Education which supersedes the provisions of § 1-612.13, such provisions shall expire on the day after the date that the agreement's terms commence.

(f) The Office of Employee Appeals and the Public Employee Relations Board shall each issue rules and regulations for the conduct of their respective business, as provided in §§ 1-604.4(f) and 1-606.2(a)(5), and §§ 1-604.4(e) and 1-605.2(11), respectively, within 180 days of their appointment.

(g) The provisions of § 1-605.2(11) shall be effective on the date following the day that the members of the Public Employee Relations Board have been appointed: Provided, however, that employees of the Public Employee Relations Board shall provide staff support to the Board of Labor Relations from the date of its taking office.

(h) The provisions of subchapters I, II, III, IV, VII, XVI, XIX, XXI, XXII, XXIII, XXIV, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIV, XXXV, and XXXVI of this chapter, and §§ 1-626.1 and 1-626.2 shall become effective on April 1, 1979, or on the 60th day following March 3, 1979, whichever is later.

(i) The provisions of subchapters V, VI, XVII, and XVIII of this chapter and § 1-633.3(2) shall become effective 60 days after the date that rules and regulations are issued by the respective Office of Employee Appeals and the Public Employee Relations Board.

(j) The provisions of subchapters VIII, IX, XII, XIII, XIV, XV, XX, and XXV of this chapter shall become effective on January 1, 1980: Provided, however, that any earlier date contained within such subchapters shall be effected.

(k) The provisions of §§ 1-610.4, 1-610.7, and 1-610.9 shall become effective on January 1, 1980.

(l) The provisions of this section shall become effective on March 3, 1979.

(m) The provisions of subchapter XXXIII of this chapter shall become effective as follows:

(1) Paragraphs (1), (2), (3), (4), (5), and (6) of subsection (a) of § 1-633.2 shall become effective on January 1, 1980;

(2) Paragraphs (7) and (8) of subsection (a) of § 1-633.2 shall become effective as provided in subsection (i) of this section;

(3) Paragraphs (9) and (10) of subsection (a) of § 1-633.2 shall become effective as provided in subsection (h) of this section;

(4) Section 1-633.3 shall become effective on January 1, 1980;

(5) Sections 31-101, 31-107, 31-802, 31-1101 note, 31-1122, 31-1514, 31-1516, and 31-1535 shall become effective on January 1, 1980;

(6) Sections 1-208, 1-345, 1-348, 1-355, 1-817, 1-1304 to 1-1310, 1-1431, 1-2204, 1-2312, 1-2704, 1-2705, 2-212, 2-327, 2-604, 2-606, 2-1303, 2-1701.8, 2-2308, 2-2616, 3-105, 5-104, 5-430, 5-702, 5-813, 6-1405, 6-2212, 8-212, 25-104, 29-399.21, 29-594, 31-1604, 31-1605, 31-2005, 32-127, 32-219, 33-523, 36-227, 36-402, 37-105, 40-703, 40-810, 40-1016, 43-401, 43-406, 43-408, 45-903, 45-904, 45-1903, 46-114, 47-113, 47-825, 47-2409, and Organization Order No. 127 shall become effective on January 1, 1980;

(7) Sections 1-1451, 1-1461, and 1-1462 shall become effective as provided in subsection (a) of this section;

(8) Section 1-633.4 shall become effective on March 3, 1979;

(9) Subsection (a) of § 1-633.5 shall become effective as provided in subsection (i) of this section;

(10) Subsection (d) of § 1-633.5 shall become effective on January 1, 1980;

(11) Sections 4-838, 4-839, and 31-1501a shall become effective as provided in subsection (d) of this section;

(12) Subsections (b) and (c) of § 1-633.5 shall become effective on March 1, 1980;

(13) Section 1-633.6 shall become effective on March 3, 1979; and

(14) Section 1-633.3(1) and (3) shall become effective on January 1, 1980.

(n) Notwithstanding any other subsection of this section, any personnel authority or agency vested with authority to issue rules and regulations pursuant to § 1-604.4 may issue such rules and regulations prior to the effective date of such authority.

(o) Persons performing personnel functions to be transferred to the Office of Personnel under the authority of § 1-604.7 shall be transferred no later than 90 days after the Office is created. (1973 Ed., § 1-366.1; Mar. 3, 1979, D.C. Law 2-139, § 3602, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(ii), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-602.4, 1-605.3, 1-606.1, 1-624.46, 1-633.1, and 1-633.3.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-14. — See note to § 1-608.1.

Legislative history of Law 3-81. — See note to § 1-602.2.

References in text. — The effective date specified in subsection (a) of this section is calculated to be March 18, 1979.

The Public Employees Relations Board, referred to in subsection (g) of this section, was appointed on January 22, 1980, pursuant to Mayor's Order 80-11.

The effective date specified in subsection (h) of this section is calculated to be May 2, 1979.

In subsection (i) of this section, the Public Employee Relations Board issued rules and regulations on April 4, 1980 (24 DCR 1390) and the Office of Employee Appeals issued rules and regulations on October 3, 1980 (27 DCR 4347). The effective dates specified in subsection (i)

are calculated to be June 2, 1980 and December 2, 1980, respectively.

Sections 31-1101 note, 31-1122 referred to in subsection (m)(5) were repealed by § 11 of D.C. Law 4-78, effective March 16, 1982.

Concerning the sections referenced to in (m)(6), § 2-212 was repealed by D.C. Law 9-84, effective March 13, 1992; § 2-327 was repealed by D.C. Law 10-152, effective August 23, 1994; §§ 2-1303 and 2-1701.8 were repealed by D.C. Law 6-99, effective March 25, 1986; § 2-327 was repealed by D.C. Law 10-152, effective August 23, 1994; § 45-1903 was repealed by § 34 of D.C. Law 4-209, effective March 10, 1983; and § 47-825 was repealed by D.C. Law 9-241, effective March 17, 1993.

The sections referred to in (m)(11) were repealed by the Act of March 3, 1979, D.C. Law 2-139, § 3207(e).

Section 1-610.9, referenced in (a) and (k), was repealed by D.C. Law 12-260, effective April 20, 1999.

Cited in *Montgomery v. District of Columbia*, App. D.C., 598 A.2d 162 (1991).

§ 1-637.2. Implementation Task Force.

(a) There is hereby established a Task Force on the Implementation of the Merit Personnel Act (hereinafter referred to in this section as the "Task Force") which shall be composed of the following members: (1) Two members appointed by the Mayor; (2) 2 members appointed by the Greater Washington Central Labor Council; (3) 2 members appointed by the Committee on Government

Operations of the Council; and (4) 1 member appointed by the Chairman of the Council of the District of Columbia. The members shall elect 1 of their members as Chairperson.

(b) Each member of the Task Force shall receive payment of \$100 for each 8 hours actually worked per diem or \$12.50 per hour, whichever provides less, while in the service of the Task Force. The members shall also receive reimbursement for the payment of actual expenses incurred in the service of the Task Force.

(c) The Task Force shall study and review the implementation of this chapter giving special attention to the implementation timetable set forth in this subchapter. The Task Force shall advise the Mayor and the Council of the District of Columbia within 90 days of the date of their appointment under subsection (d) of this section as to the need for any adjustments in the timetables set forth in this subchapter and the Council may, by act, modify such timetables. The Task Force may engage in other activities as provided in this subsection.

(d) Members of the Task Force shall be appointed from constituencies as provided in subsection (a) of this section within 30 days of March 3, 1979. Any vacancies which occur in the membership of the Task Force shall be replaced from the same constituency represented by the member creating a vacancy. No person otherwise in the employ of the District government appointed to the Task Force may receive the per diem or hourly payment provided in subsection (b) of this section.

(e) The Task Force shall be disbanded no later than December 1, 1979. (1973 Ed., § 1-366.2; Mar. 3, 1979, D.C. Law 2-139, § 3603, 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Legislative history of Law 2-139. — See note to § 1-601.1.

CHAPTER 7. DISTRICT OF COLUMBIA EMPLOYEES RETIREMENT PROGRAM MANAGEMENT.

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Sec.

1-701. Findings; purpose.

1-702. Definitions.

Subchapter II. Establishment of Retirement Board and Retirement Funds.

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1-712. District of Columbia Police Officers and Fire Fighters' Retirement Fund.

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1-714. District of Columbia Judges' Retirement Fund.

1-715. Management of Retirement Funds.

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Subchapter I. Findings; Purpose; Definitions.

§ 1-701. Findings; purpose.

(a) The Congress finds that the retirement benefits authorized by various acts of Congress for the police officers, fire fighters, teachers, and judges of the District of Columbia have not been financed on an actuarially sound basis. Neither federal payments to the District nor District of Columbia appropriations have taken into account the long-term financial requirements of the District's retirement programs. As a result, the annual budget cost to the District of Columbia for annuities and refunds of deductions is growing at a rapid rate, and, in the case of the retirement program for police officers and fire fighters, is predicted to exceed the cost of salaries for active police officers and fire fighters by the year 2000.

(b) It is the purpose of this chapter:

(1) To establish separate retirement Funds for police officers and fire fighters, for teachers, and for judges of the District of Columbia;

(2) To establish a Retirement Board with responsibility for managing these Funds;

(3) To require that these Funds be managed on an actuarially sound basis in order to provide proper financing for the benefits to which the District's retired police officers, fire fighters, teachers, and judges are entitled;

(4) To require that the Retirement Board comply with reporting and disclosure requirements similar to those imposed under the Employee Retirement Income Security Act of 1974; and

(5) To provide for federal payments to these Funds to help finance, in part, the liabilities for retirement benefits incurred by the District of Columbia prior to the establishment of self-government under the District of Columbia Self-Government and Governmental Reorganization Act. (1973 Ed., § 1-1801; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 101.)

Section references. — This section is referred to in §§ 1-781.2, 11-1561, 11-1564, and 11-1569.

References in text. — "The Employee Retirement Income Security Act of 1974," referred

to in (b)(4) is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829.

Cited in District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428 (D.D.C. 1987).

§ 1-702. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia.

(3) The term "Speaker" means the Speaker of the House of Representatives.

(4) The term "President pro tempore" means the President pro tempore of the Senate.

(5) The term "Board" means the District of Columbia Retirement Board established by § 1-711.

(6) The term "Custodian of Retirement Funds" means the Board, except that until such time as the members of the Board are first elected and the Board certifies pursuant to § 1-711(h) that it is assuming responsibility for the Funds established by this chapter, the term "Custodian of Retirement Funds" means the Director of the Office of Budget and Financial Management of the District of Columbia (established by Organization Order No. 30, Commissioner's Order No. 72-80, April 5, 1972).

(7) The term "retirement program" means:

(A) The program of annuities and other retirement and disability benefits for members and officers of the Metropolitan Police force and the Fire Department of the District of Columbia, but does not include the program of annuities and other retirement and disability benefits for members and officers of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.);

(B) The program of annuities and other retirement and disability benefits for judges of the courts of the District of Columbia under subchapter III of Chapter 15 of Title 11 of the District of Columbia Code; or

(C) The program of annuities and other retirement and disability benefits for teachers in the public day schools of the District of Columbia.

(8) The term “state” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

(9) The term “party in interest” means:

(A) Any person (including a member of the Board) having fiduciary responsibilities under this chapter;

(B) Any person providing services to a Fund;

(C) The government of the District of Columbia;

(D) An employee organization; and

(E) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(10) The term “Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund established by § 1-712, the District of Columbia Teachers’ Retirement Fund established by § 1-713, or the District of Columbia Judges’ Retirement Fund established by § 1-714.

(11) The term “current value” means fair market value where available (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Board), or otherwise the fair value (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Board), assuming an orderly liquidation at the time of such determination.

(12) The term “future value” means a liability for a given prior fiscal year expressed in terms of the price level expected to prevail in a given future fiscal year, adjusted at the rate of inflation used with regard to determinations made under § 1-722(a)(1).

(13) The term “qualified public accountant” means a person who is a certified public accountant, certified by a regulatory authority of a state.

(14) The term “enrolled actuary” means an actuary enrolled under subtitle C of Title III of the Employee Retirement Income Security Act of 1974.

(15) The term “security” means a security as defined in § 2(1) of the Securities Act of 1933.

(16) The term “employee organization” means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which individuals covered by a retirement program participate and which exists for the purpose, in whole or in part, of dealing with the government of the District of Columbia concerning such retirement program.

(17) The term “teacher” means a teacher as defined in § 31-1235.

(18) The term “judge” means a judge as defined in § 11-1561(1).

(19) The term “participant” does not include an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, to whom the Policemen and Firemen’s Retirement and Disability Act (D.C. Code, § 4-607 et seq.)

applies; and, unless the context requires otherwise, the term “beneficiary” does not include a beneficiary under such Act of any such officer or member.

(20)(A) The term “fiduciary” means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to a Fund:

(i) Exercises any discretionary authority or discretionary control respecting management of such Fund or exercises any discretionary authority or discretionary control respecting management or disposition of its assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of such Fund, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of such Fund.

(B) If any money or other property of a Fund is invested in securities issued by an investment company registered under title I of An Act To provide for the registration and regulation of investment companies and investment advisers, and for other purposes (15 U.S.C. § 80a-1 et seq.) (“Investment Company Act of 1940”), that investment shall not by itself cause the investment company or the investment company’s adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this chapter. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law. (1973 Ed., § 1-1802; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 102; Mar. 24, 1990, D.C. Law 8-97, § 2(a), 37 DCR 1046.)

Section references. — This section is referred to in §§ 1-741, 1-3001, 4-601, 4-610, 4-612, 31-1221, 31-1226, 31-1231, and 31-1251.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

References in text. — The “Executive Protective Service” was changed to “United States Secret Service Uniformed Division” in paragraphs (7)(A) and (19) by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

“Subtitle C of Title III of the Employee Retirement Income Security Act of 1974,” referred to in (14) is codified at 29 U.S.C. § 1341 et seq.

“Section 2(1) of the Securities Act of 1933,” referred to in (15) is codified at 15 U.S.C. § 77b.

Subchapter II. Establishment of Retirement Board and Retirement Funds.

§ 1-711. District of Columbia Retirement Board.

(a) There is established, as an independent agency of the government of the District of Columbia, a board of trustees to be known as the District of Columbia Retirement Board which shall have exclusive authority and discretion (subject to the requirements of this chapter) to manage and control the Funds established by this chapter.

(b)(1)(A) The Board shall consist of 12 members selected as follows:

(i) One member or officer of the Metropolitan Police force of the District of Columbia, to be elected by the members and officers of the Metropolitan Police force;

(ii) One retired member or officer of the Metropolitan Police force to be elected by the retired members and officers of the Metropolitan Police force;

(iii) One member or officer of the Fire Department of the District of Columbia, to be elected by the members and officers of the Fire Department;

(iv) One retired member or officer of the Fire Department of the District of Columbia, to be elected by the retired members and officers of the Fire Department;

(v) One teacher in the public day schools of the District of Columbia, to be elected by the teachers of the public day schools of the District of Columbia;

(vi) One teacher in the public day schools of the District of Columbia who is retired, to be elected by the retired teachers of the public day schools of the District of Columbia;

(vii) One senior judge and an alternate senior judge appointed by the Joint Committee on Judicial Administration of the District of Columbia. For purposes of calculating the total number of members of the Board, the senior judge and the alternate senior judge combined shall constitute one member of the Board.

(viii) Three individuals appointed by the Council of the District of Columbia; and

(ix) Three individuals appointed by the Mayor.

(B) A vacancy on the Board shall be filled in the manner in which the original selection was made.

(C) Upon transfer of the assets of the Judges' Retirement Fund to the U.S. Secretary of the Treasury pursuant to Subtitle A of Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 963), the senior judge and the alternative senior judge shall no longer serve on the Board. Thereafter, the Board shall consist of 12 members.

(2) The 1st election of the Board members described in sub-subparagraphs (i) through (vi) of subparagraph (A) of paragraph (1) of this subsection shall be conducted within 6 months after the date of the enactment of this chapter in accordance with regulations which the Mayor shall promulgate. Thereafter, elections shall be conducted by the Board. In any such election, voting shall be by secret ballot, and each individual to be represented on the Board by the winner of such election shall be eligible to vote in such election.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the members of the Board shall each serve a term of 4 years, except that a member selected to fill a vacancy occurring prior to the end of the term for which his predecessor was selected shall only serve until the end of such term. A member may serve after the expiration of his term until his successor has taken office.

(B) Of the members of the Board who are first selected: (i) Two shall serve for a term of 1 year; (ii) three shall serve for a term of 2 years; (iii) three shall serve for a term of 3 years; and (iv) three shall serve for a term of 4 years; as determined by lot at the 1st meeting of the Board.

(4) No individual shall serve more than 2 terms as a member of the Board, except that an individual serving less than 2 years of a term to which some other individual was originally selected shall be eligible for 2 full terms as a member of the Board and an individual serving 2 years or more of a term to which some other individual was originally selected shall be eligible for only 1 full term as a member of the Board.

(5) Any individual who was selected as a member of the Board under sub-subparagraph (A)(i), (iii), or (v) of paragraph (1) of this subsection and who ceases to be a member or officer of the Metropolitan Police force, member or officer of the Fire Department, or a teacher, as the case may be, may not continue as a member of the Board.

(6) No member of the Board may hold or be a candidate for any elective office in the District of Columbia.

(7) A member of the Board shall not have any personal interest, direct or indirect, except as a participant in a retirement program, in any transaction involving assets of the Funds established by this chapter and shall otherwise comply with the standards of conduct established by subchapter V of this chapter.

(8) Not less than 2 members of the Board appointed by the Mayor and 1 member of the Board appointed by the Council under paragraph (1) of this subsection shall be individuals who have professional experience in the banking, insurance, or investment industry.

(9) Any member of the Board may be removed from the Board by a vote of two thirds of the members of the Board for a breach of fiduciary responsibility with respect to a Fund or for a violation of § 1-744.

(10) The Board shall elect 1 member of the Board to be Chairman of the Board. The Chairman shall be elected for a term of 1 year, but may be removed from such position by a vote of two thirds of the members of the Board.

(11) The Director of the Office of Budget and Financial Management of the District of Columbia shall be an ex officio member of the Board, but shall not vote, shall not be eligible to be elected Chairman of the Board, and shall not be counted for purposes of a quorum.

(c)(1) Subject to the availability of appropriations for that purpose, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of pay in effect for the highest step of grade DS-15 under Chapter 6 of this title for each hour that the member is engaged in the actual performance of duties vested in the Board, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the United States shall not be entitled to receive pay under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours, and the total amount to which a member may be entitled under this subsection during a year (beginning with 1998) may not exceed \$5,000.

(2) Members of the Board who are employees of the District of Columbia shall be entitled to leave, without loss of pay, leave, or credit for time of service, while engaged in the actual performance of duties vested in the Board. To the extent that Board duties are performed by a District employee during other than the regularly scheduled working hours of the employee, the employee

shall be entitled to receive pay in accordance with paragraph (1) of this subsection.

(3) Members of the Board who are eligible to receive compensation under this subsection are exempt from §§ 4-629(e), 31-1245, and 1-612.3(b) and (c).

(4) The Board may participate in seminars, conventions, dinners, or similar activities at the expense of a bank, investment manager, brokerage firm, or other entity only if the principal purpose of the activity is to discuss financial matters for the benefit of the participants and beneficiaries of the Fund and the activity is of a nature normally provided free of charge to other institutional investors. Participation in the activities in accordance with this paragraph shall not constitute a violation of subchapter XIX of Chapter 6 of this title. The Board shall provide a list of these activities, indicating the sponsor and date of each activity, as part of the annual report provided for in § 1-732.

(d)(1) The Board shall meet at least once each calendar quarter at a regular and specified time. It shall meet at such other times as the Chairman or any 3 members of the Board may prescribe.

(2) Any 8 members shall constitute a quorum for the transaction of the business of the Board.

(3) Except as otherwise provided in this chapter, actions of the Board shall be determined by a majority vote of the members present and voting.

(e) The Board shall from time to time promulgate rules and regulations, adopt resolutions, issue directives for the administration and transaction of its business and for the control of the Funds established by this chapter, and perform such other functions as may be necessary to carry out its responsibilities under this chapter.

(f)(1) All administrative expenses incurred by the Board in carrying out this chapter, including compensation for the members of the Board, shall be paid out of funds appropriated for such purpose.

(2) The budget prepared and submitted by the Mayor pursuant to § 47-301 shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board.

(3) The Mayor and the Council may establish the amount of funds which will be allocated to the Board for administrative expenses, but may not specify the purposes for which such funds may be expended or the amounts which may be expended for the various activities of the Board.

(g)(1) The Board shall engage the services of competent investment counsel or counsels each of whom shall be either:

(A) Registered under title II of An Act To provide for the registration and regulation of investment companies and investment advisers (15 U.S.C. § 80b-1 et seq.) ("Investment Advisers Act of 1940");

(B) A bank, as defined in the Investment Advisers Act of 1940; or

(C) An insurance company qualified to perform investment advisory services under the laws of more than 1 state. The investment counsel or counsels shall be fiduciaries with respect to services rendered to the Board. This fiduciary relationship shall be specified in a written agreement between the investment counsel or counsels and the Board.

(2) As an independent agency of the District government pursuant to this chapter and § 1-603.1(13), the Board may appoint any staff it considers necessary to carry out the responsibilities under this chapter. Staff appointed by the Board shall be subject to Chapter 6 of this title.

(h) Not more than 90 days after all initial members of the Board have been selected in accordance with subsection (b) of this section, the Board shall certify in writing to the Director of the Office of Budget and Financial Management of the District of Columbia that the Board is assuming responsibility for the Funds established by this chapter.

(i)(1) The Board shall have the authority to enter into contracts with the governments of the District of Columbia and the United States and other public and private entities to the extent necessary to carry out its responsibilities under this chapter.

(2) The Board shall issue proposed rules governing the procurement of goods and services pursuant to the authority granted in paragraph (1) of this subsection. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(j) In accordance with § 1-765.1, after enactment of Chapter 7A of this title, the Board shall continue to discharge its duties and responsibilities under the retirement program and to the Funds (as the duties and responsibilities are modified by the Retirement Protection Act), including the responsibility for federal benefit payments provided in § 1-782.5, until the Secretary of the U.S. Treasury provides notification to the District government as required under the Retirement Protection Act. (1973 Ed., § 1-1811; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 121; Mar. 24, 1990, D.C. Law 8-97, § 2(b), 37 DCR 1046; Sept. 10, 1992, D.C. Law 9-145, § 401(a), 39 DCR 4895; Mar. 16, 1993, D.C. Law 9-201, § 2, 39 DCR 9219; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, § 139(a); Mar. 16, 1995, D.C. Law 10-214, § 2, 41 DCR 8034; Apr. 18, 1996, D.C. Law 11-110, § 4, 43 DCR 530; Aug. 5, 1997, 111 Stat. 758, Pub. L. 105-033, § 11252(c); Nov. 19, 1997, 111 Stat. 2184, Pub. L. 105-100, § 152(a); Sept. 18, 1998, D.C. Law 12-152, §§ 205, 206, 45 DCR 4045; Oct. 21, 1998, 112 Stat. 2421, Pub. L. 105-274, § 2(d)(1), (e)(3); Oct. 21, 1998, 112 Stat. 2681-536, Pub. L. 105-277, § 804(d)(1), (e)(3).)

Cross references. — As to compensation for members of the Police and Firemen's Retirement and Relief Board, see § 1-612.8(c)(2)(C).

As to compensation of the Chairperson of the Police and Firemen's Retirement and Relief Board, see § 1-612.8(c)(2)(J).

Section references. — This section is referred to in §§ 1-613.3, 1-702, 1-715, 1-721, and 1-781.2.

Effect of amendments. — Section 11252(c) of Pub. L. 105-33, 111 Stat. 758, in (b)(1)(A), substituted "11 people" for "13 people" in the introductory language; deleted (vii); and redese-

igned former (viii) and (ix) as present (vii) and (viii).

Section 152(a) of Pub. L. 105-100, 111 Stat. 2184, in (c)(1), added "and the total amount to which a member may be entitled under this subsection during a year (beginning with 1998) may not exceed \$5,000."

Public Law 105-274 substituted "12" for "11" in (b)(1)(A).

Public Law 105-277 substituted "12" for "11" in (b)(1)(A).

D.C. Law 12-152, in (b)(1)(A), purported to substitute "13" for "11" in the lead-in language,

and inserted (vii) and redesignated former (vii) and (viii) as (viii) and (ix), respectively; added (b)(1)(C); and added (j).

None of the 1998 amendments to (b)(1)(A) referred to the others, and effect has been given to the amendments made by Public Laws 105-274 and 105-277.

Temporary amendments of section. — Section 205 of D.C. Law 12-58 added (j).

Section 209(b) of D.C. Law 12-58 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531), § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673), and § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

Section 207 of D.C. Act 12-155 provides for the application of the act.

Legislative history of Law 8-97. — See note to § 1-702.

Legislative history of Law 9-134. — Law 9-134, the "Omnibus Budget Support Temporary Act of 1992," was introduced in Council and assigned Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its review. D.C. Law 9-134 became effective on July 23, 1992.

Legislative history of Law 9-145. — Law 9-145, the "Omnibus Budget Support Act of 1992," was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C. Law 9-145 became effective on September 10, 1992.

Legislative history of Law 9-201. — Law 9-201, the "District of Columbia Retirement

Board Judicial Appointment Act of 1992," was introduced in Council and assigned Bill No. 9-419, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-326 and transmitted to both Houses of Congress for its review. D.C. Law 9-201 became effective on March 16, 1993.

Legislative history of Law 10-214. — Law 10-214, the "District of Columbia Retirement Board Judicial Appointment Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-613, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-351 and transmitted to both Houses of Congress for its review. D.C. Law 10-214 became effective on March 16, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-131. — Law 11-131, the "Retirement Reform Temporary Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-562. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-238 and transmitted to both Houses of Congress for its review. D.C. Law 11-131 became effective on May 24, 1996.

Legislative history of Law 12-58. — Law 12-58, the "Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-383. The Bill was adopted on first and second readings on September 24, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 22, 1997, it was assigned Act No. 12-189 and transmitted to both Houses of Congress for its review. D.C. Law 12-58 became effective on March 20, 1998.

Legislative history of Law 12-152. — Law 12-152, the "Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998," was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7,

1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

Effective date of § 11252(c) of Pub. L. 105-33. — Section 2(d)(3) of Pub. L. 105-274 and § 804(d)(3) of Pub. L. 105-277 provides that § 11252(c) of Pub. L. 105-33, as renumbered by § 2(d)(1) of Pub. L. 105-274 and § 804(d)(1) of Pub. L. 105-277, shall take effect on the date on which the assets of the District of Columbia Judges Retirement Fund are transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund.

Repeal of Title IV of D.C. Law 9-145. — Section 139(a) of Pub. L. 103-127, 107 Stat.

1349, provides that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

References in text. — Section 1-612.3(c), referred to in paragraph (c)(3), was repealed by D.C. Law 10-172, § 2, effective Sept. 22, 1994.

Application of Law 12-152. — Section 209 of D.C. Law 12-152 provided that the act shall apply as of October 1, 1997.

§ 1-712. District of Columbia Police Officers and Fire Fighters' Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Police Officers and Fire Fighters' Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

(1) Any amount paid to the Custodian of Retirement Funds pursuant to the last sentence of § 4-612(a) or to § 4-610(e)(1) or to § 4-601;

(2) Any amount appropriated for such Fund under subchapter III of this chapter; and

(3) Any return on investment of the assets of such Fund.

(b) After September 30, 1979, or after the end of the 30-day period beginning on the date on which funds are first appropriated to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, whichever is later, all payments of annuities and other retirement and disability benefits (including refunds and lump-sum payments) under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, § 4-607 et seq.) shall be made from the Fund (except for any such payment which is made to an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or to a beneficiary of any such officer or member). (1973 Ed., § 1-1812; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(a).)

Section references. — This section is referred to in §§ 1-702, 1-752, 1-781.2, 4-601, 4-602, 4-610, 4-612, and 4-623.

Emergency act amendments. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters and Teachers Pension Modification Amendment Act," was introduced in Council and assigned Bill No. 11-316, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

References in text. — The “Executive Protection Service” was changed to “United States Secret Service Uniformed Division,” referred to in subsection (b), by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

Lump-sum payments to certain retired employees. — H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that notwithstanding any other provisions of law, in the case of each employee who retired from the Fire Department of the District of Columbia before February 15, 1980, and who is receiving from the date of enactment of this act an annuity based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than September 30, 1985, to each such employee a lump-sum payment equal to 3 percent of his or her annuity.

Section 101(d) of Pub. L. 99-591, the D.C.

Appropriations Act, 1987, provided, that, notwithstanding any other provision of law, in the case of each employee who retired from the Fire Department of the District of Columbia between November 24, 1984, and April 13, 1985 (both dates inclusive), and who on the date of the enactment of this Act are receiving annuities based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than October 15, 1986, to each such employee a lump-sum payment equal to 3 percent of his or her annuity.

Federal contribution to retirement funds. — Public Law 104-194, 110 Stat. 2356, the District of Columbia Appropriations Act, 1997, provided for the federal contribution to the Police Officers’ and Fire Fighters’, Teachers’, and Judges’ Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), \$52,070,000.

§ 1-713. District of Columbia Teachers’ Retirement Fund.

(a)(1) There is established a fund to be known as the District of Columbia Teachers’ Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

(A) Any amount paid to the Custodian of Retirement Funds pursuant to § 31-1221 et seq., or under § 31-1251;

(B) Any asset transferred to such Fund under subsection (b) of this section;

(C) Any amount appropriated for such Fund under subchapter III of this chapter; and

(D) Any return on investment of assets of such Fund.

(2) Annuities and other retirement and disability benefits (including refunds and lump-sum payments) payable from the District of Columbia Teachers’ Retirement and Annuity Fund established by § 31-1223 shall continue to be paid from such Fund until all amounts in such Fund have been expended or transferred under subsection (b) of this section to the District of Columbia Teachers’ Retirement Fund, and thereafter such benefits shall be paid from the District of Columbia Teachers’ Retirement Fund.

(b) Notwithstanding any other provision of law, any asset held in the District of Columbia Teachers’ Retirement and Annuity Fund established by § 31-1223 may be transferred to the District of Columbia Teachers’ Retirement Fund established by subsection (a) of this section. (1973 Ed., § 1-1813; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(a), (c).)

Section references. — This section is referred to in §§ 1-702, 1-752, 1-781.2, 31-1221, 31-1226, 31-1231, 31-1236, 31-1238, 31-1243, 31-1244, 31-1250, and 31-1251.

Emergency act amendments. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers’, Fire Fighters’, and Teachers’ Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension

Modification Congressional Adjournment
Emergency Amendment Act of 1997 (D.C. Act
12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the
application of the act.

Legislative history of Law 11-218. — See
note to § 1-712.

Cited in District of Columbia Retirement Bd.
v. United States, 657 F. Supp. 428 (D.D.C.
1987).

§ 1-714. District of Columbia Judges' Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Judges' Retirement Fund into which shall be deposited the following (except as provided in § 11-1570), which shall constitute the assets of the Fund:

(1) Any amount deposited pursuant to subchapter III of Chapter 15 of Title 11;

(2) Any asset transferred to such Fund under subsection (b) of this section;

(3) Any amount appropriated for such Fund under subchapter III of this chapter; and

(4) Any return on investment of the assets of such Fund.

(b) Notwithstanding any other provision of law, any asset held in the District of Columbia Judicial Retirement and Survivors Annuity Fund may be transferred to the District of Columbia Judges' Retirement Fund established by subsection (a) of this section.

(c)(1) Notwithstanding any other provision of this chapter or the amendments made by this chapter, upon the date the assets of the Retirement Fund described in subtitle A of title XI of the Balanced Budget Act of 1997 are transferred, the assets of the District of Columbia Judges' Retirement Fund established under subsection (a) shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund under § 11-1570, and no amounts shall be deposited into the District of Columbia Judges' Retirement Fund after the date on which the assets are so transferred.

(2) In accordance with the direction of the Secretary, the District of Columbia Judges' Retirement Fund established under subsection (a) shall be continued at the Board and used for the purposes provided in this chapter until such time as all amounts in such Fund have been expended or transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund pursuant to paragraph (1) of this subsection. Thereafter any payments of retirement pay, annuities, refunds, and allowances for judicial personnel of the District of Columbia shall be paid from the District of Columbia Judicial Retirement and Survivors Annuity Fund in accordance with subchapter III of Chapter 15 of Title 11. (1973 Ed., § 1-1814; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(a), (c); Aug. 5, 1997, 111 Stat. 758, Pub. L. 105-33, § 11252(a); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(c); Oct. 21, 1998, 112 Stat. ---, Pub. L. 105-277, § 804(c).)

Section references. — This section is referred to in §§ 1-702, 1-752, 1-781.2, 11-1561, and 11-1564.

Effect of amendments. — Section 11252(a) of Pub. L. 105-33, 111 Stat. 758, added (c).

Public Law 105-274 inserted "(except as provided in § 11-1570)" in (a); substituted "subtitle A of title XI of the Balanced Budget Act of 1997" for "subtitle A of the National Capital Revitalization and Self-Government Improvement Act

of 1997” in (c)(1); and, in (c)(2), in the first sentence, substituted “In accordance with the direction of the Secretary, the” for “The,” “at the Board” for “in the Treasury,” and “used” for “appropriated.”

Public Law 105-277 inserted “(except as provided in § 11-1570)” in (a); substituted “subtitle A of title XI of the Balanced Budget Act of 1997” for “subtitle A of the National Capital Revitalization and Self-Government Improvement Act of 1997” in (c)(1); and, in (c)(2), in the first sentence, substituted “In accordance with the direction of the Secretary, the” for “The,” “at the Board” for “in the Treasury,” and “used” for “appropriated.”

Emergency act amendments. — For temporary amendment of section, see § 2 of the Comprehensive Merit Personnel Act Annuity Offset Emergency Amendment Act of 1997 (D.C. Act 12-123, August 1, 1997, 44 DCR 4652), and see § 2 of the Comprehensive Merit

Personnel Act Annuity Offset Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-183, October 30, 1997, 44 DCR 6958).

References in text. — Subtitle A of title XI of the Balanced Budget Act of 1997, referred to in (c)(1), is subtitle A of title XI of Pub. L. 105-33, codified at Chapter 7A of Title 1.

“This Act,” referred to in (c)(1) and (2), is the Balanced Budget Act of 1997, Pub. L. 105-33.

Federal contribution to retirement funds. — Public Law 104-194, 110 Stat. 2356, the District of Columbia Appropriations Act, 1997, provided for the federal contribution to the Police Officers’ and Fire Fighters’, Teachers’, and Judges’ Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), \$52,070,000.

Cited in District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428 (D.D.C. 1987).

§ 1-715. Management of Retirement Funds.

(a)(1) The Custodian of Retirement Funds shall be the custodian of the assets of each Fund established by this chapter and shall manage and invest such assets in accordance with this chapter. Except as provided in paragraph (2) of this subsection, all assets in the possession or control of the Board shall be held in trust pursuant to a written trust instrument by 1 or more trustees appointed by the Board in its fiduciary capacity. Upon acceptance of the appointment, the trustee or trustees shall have authority and discretion to manage and control the assets assigned to it by the Board except to the extent that authority to manage, acquire, or dispose of assets of the Fund is retained by the Board or is delegated by the Board to 1 or more investment counsels pursuant to § 1-711(g)(1).

(2) The requirements of paragraph (1) of this subsection shall not apply to any assets of a Fund which consist of insurance contracts of policies issued by an insurance company qualified to do business in a state.

(b) The assets of each Fund shall be kept separate from other moneys which may be under the control of the Custodian of Retirement Funds, but need not be kept separate from the assets of the other Funds if the Board determines that commingling of such assets is advisable for investment purposes.

(c) The Board shall maintain, in an appropriate depository, a cash reserve for the Funds in an amount determined by the Board to be sufficient to meet current outlays for annuities and other retirement and disability benefits authorized to be paid from such Funds. (1973 Ed., § 1-1815; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 125; Mar. 24, 1990, D.C. Law 8-97, § 2(c), 37 DCR 1046.)

Legislative history of Law 8-97. — See note to § 1-702.

Independent audit of Retirement Board. — Section 135 of Public Law 103-334, 108 Stat. 2588, the District of Columbia Appropriations

Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and

recommendations not later than 6 months after the date of the enactment of this Act regarding the appropriateness and adequacy of the Retirement Board's fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

§ 1-716. Payments from Retirement Funds.

The Mayor shall notify the Custodian of Retirement Funds of any payments to be made from the Funds established by this chapter for annuities or other retirement or disability benefits (including refunds and lump-sum payments), and the Custodian of Retirement Funds shall make such payments from the appropriate Fund. (1973 Ed., § 1-1816; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 126.)

Subchapter III. Financing of Retirement Benefits.

§ 1-721. Limitation on investment of Retirement Funds.

(a) The assets of the Funds established by this chapter may not be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(2) Obligations fully guaranteed as to the payment of both principal and interest by the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(3) Real property in the District of Columbia, Virginia, or Maryland;

(4) Loans, mortgages, bonds, notes, bills, or certificates of indebtedness secured, in whole or in part, by real property in the District of Columbia, Virginia, or Maryland;

(5) Repealed.

(b) Until such time as the members of the Board are first selected and the Board certifies pursuant to § 1-711(h) that it is assuming responsibility for the Funds established by this chapter, the assets of such Funds may only be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the United States government, or obligations fully guaranteed as the payment of both principal and interest by the United States government; and

(2) Interest-bearing certificates of deposit issued by national, state, or District of Columbia savings and loan institutions.

(c)(1) Any assets of the Funds invested after March 16, 1993, in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;

(C) Banning provocative religious or political emblems from the workplace;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(3)(A) On or before the 1st day of October of each year, the Mayor shall determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which Funds are or will be invested, in adhering to the MacBride Principles as enumerated in paragraph (2) of this subsection and provide an annual report of his or her findings for presentation to the Council, which report shall be made available for public inspection.

(B) In making the determination pursuant to subparagraph (A) of this paragraph, the Mayor may rely on reference sources, such as the Investor Responsibility Research Center (IRRC), in making a determination with respect to the affirmation action taken by the institutions and companies. (1973 Ed., § 1-1821; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 141; Mar. 8, 1984, D.C. Law 5-50, § 4, 30 DCR 5916; July 22, 1992, D.C. Law 9-127, § 4, 39 DCR 3828; Mar. 16, 1993, D.C. Law 9-185, § 4, 39 DCR 8221; June 28, 1994, D.C. Law 10-134, § 3, 41 DCR 2597.)

Cross references. — As to management and investment of Housing Finance Agency funds, see § 45-2136.

Legislative history of Law 5-50. — Law 5-50 was introduced in Council and assigned

Bill No. 5-18, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 6, 1983 and October 4, 1983, respectively. Signed by the Mayor on November

9, 1983, it was assigned Act No. 5-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-127. — Law 9-127, the “Namibia Sanctions Repeal Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-361, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-211 and transmitted to both Houses of Congress for its review. D.C. Law 9-127 became effective on July 22, 1992.

Legislative history of Law 9-185. — Law 9-185, the “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-311, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-305 and transmitted to both Houses of Congress for its review. D.C. Law 9-185 became effective on March 16, 1993.

Legislative history of Law 10-75. — Law 10-75, the “South Africa Sanctions Temporary Repeal Act of 1993,” was introduced in Council and assigned Bill No. 10-417. The Bill was adopted on first and second readings on October 5, 1993, and November 5, 1993, respectively. Signed by the Mayor on November 4, 1993, it was assigned Act No. 10-142 and transmitted to both Houses of Congress for its review. D.C. Law 10-75 became effective on March 8, 1994.

Legislative history of Law 10-134. — Law 10-134, the “South Africa Sanctions Repeal Act

of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Independent audit of Retirement Board.

— Section 135 of Public Law 103-334, 108 Stat. 2588, the District of Columbia Appropriations Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and recommendations not later than 6 months after the date of enactment of this Act regarding the appropriateness and adequacy of the Retirement Board’s fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

Board to conduct study. — Section 6 of D.C. Laws 8-97 provided that the Board shall conduct a study to determine the feasibility and advisability of direct investment in real estate in the District of Columbia, Maryland, and Virginia, including providing mortgage loans to participants and beneficiaries of the Funds for the purpose of financing residential home ownership for participants and beneficiaries of the Funds. The Board shall transmit the results of the study to the Council no later than 180 days from the effective date of this act.

Delegation of Authority Under D.C. Law 9-185, “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992.”

— See Mayor’s Order 93-76, June 16, 1993.

§ 1-722. Determination of federal and District of Columbia payments to the Funds.

(a)(1) The Board shall engage an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), who shall, on the basis of the entry age normal cost funding method and in accordance with generally accepted actuarial principles and practices, make the following determinations with respect to each Fund:

(A) At the times specified in paragraph (2) of this subsection, the actuary shall determine the level percentage of payroll, expressed as a percentage (hereinafter in this chapter referred to as the “net normal cost percentage”), which shall be the percentage such that the amount equal to the product of such percentage and the present value of future compensation for participants in the retirement program, if paid annually into the Fund from the date of hire of each participant in the retirement program until the date of

such participant's death, retirement, or other withdrawal from employment covered by the retirement program, is equal to the amount of the difference between (i) the present value of the future benefits payable from the Fund to such group, and (ii) the present value of all future employee contributions to the Fund;

(B) At the times specified in paragraph (2) of this subsection, the actuary shall determine the amount (hereinafter in this chapter referred to as the "accrued actuarial liability") that is the difference between (i) the present value (as of the date of the determination) of the future benefits payable from the Fund, and (ii) the sum of the present value of all future employee contributions to the Fund, and the product of the net normal cost percentage and the present value of future compensation for participants in the retirement program;

(C) At the times specified in paragraph (2) of this subsection, the enrolled actuary shall determine the current value of the assets in the Fund;

(D) Each year, not later than 60 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under § 47-301(a), the enrolled actuary shall determine:

(i) An estimate of the current annual active duty payroll;

(ii) The amount (hereinafter in this chapter referred to as the "future federal obligation") that is the amount of the present value of the sum of the amounts authorized by § 1-724(a) to be appropriated to the Fund for fiscal years beginning on or after the date of the determination; and

(iii) The amount (hereinafter in this chapter referred to as the "net pay-as-you-go cost") that is the difference between the amount of the obligation of the Fund during the next fiscal year for the payment of benefits payable from the Fund during such year, and the amount of employee contributions to the Fund for such year;

(E) The actuary shall also determine such additional information as the Board may require in order to make the determinations specified in paragraph (4) of this subsection and in subsection (b) of this section.

(2) The actuary engaged by the Board pursuant to paragraph (1) of this subsection shall make the determinations described in subparagraphs (A), (B), and (C) of such paragraph at the following times:

(A) Not later than 60 days after the date of the enactment of this chapter;

(B) Upon a request by the Board or by the Director of the Office of Management and Budget;

(C) Not later than the end of the 90-day period beginning on the 1st day of the 3rd fiscal year occurring after the fiscal year in which the last such determination was made pursuant to any subparagraph of this paragraph.

(3)(A) On the basis of the most recent determinations made under paragraph (1) of this subsection, the enrolled actuary shall certify to the Board each year, at a time specified by the Board, the following information with

respect to each Fund for the next fiscal year:

(i) The net normal cost, which shall be computed as the product of the net normal cost percentage and the estimate by the actuary of the current annual active duty payroll;

(ii) The accrued actuarial liability;

(iii) The current value of assets in the Fund;

(iv) The future federal obligation;

(v) The net pay-as-you-go cost;

(vi) The unfunded actuarial liability, which shall be computed as the difference between the accrued actuarial liability and the sum of the current value of the assets in the Fund, and the future federal obligation; and

(vii) The amount equal to the difference between the accrued actuarial liability as of January 2, 1975 (in future value as of the end of the fiscal year for which the determination is made), and the sum of the future federal obligation, the current value of previous federal contributions, and (in the case of the District of Columbia Teachers' Retirement Fund and the District of Columbia Judges' Retirement Fund) the current value of any assets in the predecessor to such Fund as of January 2, 1975, which amount is the difference between the amount that the federal government would pay to the Fund if the federal government had assumed the funding responsibility for all accrued unfunded liabilities as of January 2, 1975, and the amount actually to be paid by the federal government.

(B) For the purposes of sub-subparagraph (vi) of subparagraph (A) of this paragraph, the term "current value of the assets in the Fund" shall be deemed to include (i) the present value of any payments to be made to the Fund by the District in accordance with subsection (b)(1)(C)(i) of this section, and (ii) the present value of the amount of any reduction in the amount of future District payments to the Fund determined in accordance with subsection (b)(1)(D) of this section.

(4) The Board shall determine:

(A) The amount of the federal payment for the next fiscal year for each Fund authorized to be appropriated under § 1-724(a); and

(B) On the basis of the most recent certification submitted by the enrolled actuary under paragraph (3) of this subsection, the amount of the District payment for the next fiscal year for each Fund, as described under subsection (b) of this section.

(b)(1)(A) For the District payment for each Fund for each fiscal year through fiscal year 2004, the Board shall determine:

(i) The unfunded actuarial liability for such Fund as of the end of fiscal year 2004;

(ii) The unfunded actuarial liability as of October 1, 1979, in future value as of the end of fiscal year 2004 for such Fund; and

(iii) The amount equal to the lesser of the net pay-as-you-go cost, and the sum of the net normal cost and the amount of annual interest (computed at the valuation rate used in the determination under subsection (a)(3)(A)(vi) of this section.

(B) If the amount determined under subparagraph (A)(i) of this paragraph is equal to the amount determined under subparagraph (A)(ii) of this

paragraph, the amount of the District payment for the fiscal year for such Fund shall be the amount determined under subparagraph (A)(iii) of this paragraph.

(C)(i) If the amount determined under subparagraph (A)(i) of this paragraph is greater than the amount of the District payment for the fiscal year for such Fund shall be the amount equal to the sum of the amount determine under subparagraph (A)(iii) of this paragraph, and the amount of the level amortization payment that, if paid annually into the Fund through the next 10 fiscal years (and accrued at the rate of interest used in determinations under subsection (a)(1) of this section), would reduce the amount determined under subparagraph (A)(i) of this paragraph to the amount determined under subparagraph (A)(ii) of this paragraph by the end of such 10 fiscal years.

(ii) A level amortization payment shall not be required under this subparagraph for any fiscal year to the extent that the difference between the amount determined under subparagraph (A)(i) of this paragraph and the amount determined under subparagraph (A)(ii) of this paragraph for such fiscal year is attributable to the failure of the federal government (other than a failure because of § 1-724(d) or § 1-725) to make all or any part of the federal payment to such Fund for any fiscal year.

(D) If the amount determined under subparagraph (A)(ii) of this paragraph is greater than the amount of the District payment for such Fund shall be the amount determined under subparagraph (A)(iii) of this paragraph reduced by the amount of level amortization payment that, if paid annually for the next 10 fiscal years, would have a future value of the end of fiscal year 2004 equal to the difference between the amount determined under subparagraph (A)(ii) of this paragraph and the amount determined under subparagraph (A)(i) of this paragraph.

(E) The amount of a District payment determined under subparagraph (C) of this paragraph may not exceed the amount determined under subparagraph (A)(iii) of this paragraph by more than 10 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, or by more than 30 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Teacher's Retirement Fund or to the District of Columbia Judges' Retirement Fund.

(F) Determinations under subparagraph (A) of this paragraph shall be made in accordance with generally accepted actuarial principles and practices.

(2) The amount of the District payment to each Fund for fiscal year 2005 and for each fiscal year thereafter shall be the sum of (A) the net normal cost, and (B) the amount of annual interest (computed at the valuation rate used in the determination pursuant to subsection (a)(1) of this section) on the unfunded actuarial liability.

(c)(1) On the basis of the most recent determinations made under subsection (a)(4) of this section, the Board shall:

(A) Not later than March 15th of each year through calendar year 2003, submit to the President and to the Congress a request for appropriation of the federal payment for the next fiscal year for each Fund; and

(B) Not less than 30 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under § 47-301(a), certify to the Mayor and the Council the amount of the District payment for each Fund.

(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to § 47-301(a), and the Council of the District of Columbia, in adopting each annual budget in accordance with § 47-304, shall include in such budget not less than the full amount certified by the Board under paragraph (1)(B) of this subsection as being the amount of the District payment for the next fiscal year for each Fund. The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Board.

(d)(1) Whenever any change in benefits under a retirement program is made, the Mayor shall engage an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), to estimate the effect of such change in benefits over the next 5 fiscal years on: (A) The net normal cost percentage with respect to the retirement program; (B) the accrued actuarial liability with respect to the retirement program; (C) the net pay-as-you-go cost with respect to the retirement program; and (D) the level of the District payments to the Fund. The Mayor shall transmit the estimates of the actuary under the preceding sentence to the Board and to the Speaker and the President pro tempore, and such change in benefits may not go into effect until the end of the 30-day period beginning on the date such transmittals are completed.

(2) In the event a change in benefits under a retirement program is made that increases the present value of benefits payable from the Fund, a level amortization payment for a period not to exceed 25 years shall be paid by the District to the Fund such that the present value of the sum of such level amortization payments equals the increase in the present value of such benefits. Such payments shall be made in addition to any other payment to the Fund required to be made by the District, and such increase in present value of benefits payable from the Fund and such payments shall be disregarded in calculating the unfunded actuarial liability under subsection (b)(1)(A) of this section.

(e) Whenever the amount authorized to be appropriated to the District of Columbia Police Officers and Fire Fighters' Retirement Fund for any fiscal year under § 1-724(a)(1) is reduced under § 1-725(c), the District shall, beginning with the next fiscal year, pay a level amortization payment to such Fund for a period not to exceed 10 years such that the present value (determined as of the beginning of the fiscal year for which such authorization is reduced) of the sum of such level amortization payments equals the amount of such reduction. Such payments shall be made in addition to any other payment to such Fund required to be made by the District and shall be disregarded in calculating the unfunded actuarial liability under subsection (b)(1)(A) of this section.

(f) The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers necessary to carry out

the responsibility of the Comptroller General under § 47-118 and under § 1-724(e). (1973 Ed., § 1-1822; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 142; Sept. 10, 1992, D.C. Law 9-145, § 401(b), 39 DCR 4895; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, § 139(a).)

Section references. — This section is referred to in §§ 1-702, 1-723 to 1-725, 1-732, and 4-610.

Legislative history of Law 9-134. — See note to § 1-711.

Legislative history of Law 9-145. — See note to § 1-711.

Legislative history of Law 10-135. — Law 10-135, the “Full Funding of Pension Liability Retirement Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-515, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-239 and transmitted to both Houses of Congress for its review. D.C. Law 10-135 became effective on June 30, 1994.

Repeal of Title IV of D.C. Law 9-145. — Section 139(a) of Pub. L. 103-127, 107 Stat. 1349, provided that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

References in text. — “The date of enactment of this chapter,” referred to in (a)(2)(A), is November 17, 1979.

Section 47-118, referred to in subsection (f) of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258. Present provisions similar to repealed § 47-118 are codified as § 47-118.1 and 31 U.S.C. § 715.

Mayor authorized to issue actuarial study. — Section 3 of D.C. Law 8-145 provided that to carry out the purposes of this act, the Mayor shall, pursuant to § 1-722(d)(1), appoint an enrolled actuary to perform the required actuarial study. The cost of the actuarial study shall be borne by the District of Columbia Police Officers’ and Fire Fighters’ Retirement Fund. The actuarial study shall be completed by June 10, 1990.

Mayor authorized to hire actuary. — Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of §§ 1-722(d) and 1-724(d).

Accrual of benefits under D.C. Law 8-145. — Section 4 of D.C. Law 8-145 provided that the increased benefits provided for in this act shall begin to accrue on April 10, 1990, but shall not be paid until the change in benefits becomes effective pursuant to § 1-722(d)(1).

Full Funding of Pension Liability Retirement Reform Amendment Act of 1994. — Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title 1 §§ 101 (b)(1) and (2), and titles II and III, shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters’ Retirement Fund, the Teachers’ Retirement Fund and the Judges’ Retirement Fund on and after October 1, 1995.

Pursuant to the effective date language in § 501 of D.C. Law 10-135, the amendments made by that act have not been given effect.

§ 1-723. Information about retirement programs.

Upon a request of the Board, the Mayor shall furnish to the Board such information with respect to retirement programs to which this chapter applies as the Board considers necessary to enable it to carry out its responsibilities under this chapter and to enable the enrolled actuary engaged pursuant to § 1-722(a) to carry out the responsibilities of the enrolled actuary under this chapter. (1973 Ed., § 1-1823; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 143.)

§ 1-724. Appropriations authorized as payments to the Funds.

(a) There is authorized to be appropriated from the revenues of the United States for fiscal year 1980 and for each fiscal year thereafter through fiscal year 2004:

(1) As the federal payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, the sum of \$34,170,000, reduced by the amount of any reduction required under § 1-725(c);

(2) As the federal payment to the District of Columbia Teachers' Retirement Fund, the sum of \$17,680,000; and

(3) As the federal payment to the District of Columbia Judges' Retirement Fund, the sum of \$220,000.

(b)(1) Amounts appropriated as a federal payment to a Fund established by this chapter shall not be subject to apportionment and shall be deposited in the appropriate Fund not more than 30 days after they are appropriated or 30 days after the beginning of the fiscal year for which they are appropriated, whichever is later.

(2) Amounts appropriated as a District of Columbia payment to a Fund established by this chapter shall be deposited in the appropriate Fund in equal quarterly installments, the 1st of which shall be made not more than 30 days after amounts are appropriated or 30 days after the beginning of the fiscal year for which amounts are appropriated, whichever is later. The remaining installments shall be made on the 1st day of succeeding quarters of the fiscal year. If the District is late in making an installment, the Board shall charge the District daily interest, at a rate consonant with the Board's fiduciary duty.

(c) If at any time the balance of any Fund established by this chapter is not sufficient to meet all obligations against such Fund, such Fund shall have a claim on the revenues of the District of Columbia to the extent necessary to meet such obligations.

(d) If, for any fiscal year, the Mayor and the Council do not carry out the requirements of subsections (c)(2), (d), and (e) of § 1-722 with respect to a Fund, no funds authorized to be appropriated for such Fund by this section shall be available for such Fund for such fiscal year.

(e)(1) In the year 2004, the Comptroller General shall determine whether the federal share with respect to each Fund has been paid in full by payments made pursuant to appropriations authorized under subsection (a) of this section and, in the case of the District of Columbia Police Officers and Fire Fighters' Retirement Fund, by payments made or to be made under § 1-722(e).

(2) For the purposes of this subsection, the term "federal share", with respect to a retirement program, means the sum of:

(A) Eighty percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon the years of creditable service of the participant (and for the beneficiaries of such participants under the retirement program); and

(B) Thirty-three and one-third percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired

before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon a disease or disability from which the participant is suffering (and for the beneficiaries of such participants under the retirement program).

(f) Notwithstanding any other provision of this Act, no Federal payments may be made to any Fund established by this title for any fiscal year after fiscal year 1997. (1973 Ed., § 1-1824; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 144; Mar. 24, 1990, D.C. Law 8-97, § 2(d), 37 DCR 1046; Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11084(a)(2).)

Section references. — This section is referred to in §§ 1-722 and 1-725.

Effect of amendments. — Section 11084(a)(2) of Pub. L. 105-33, 111 Stat. 730, added (f).

Legislative history of Law 8-97. — See note to § 1-702.

Legislative history of Law 10-135. — See note to § 1-722.

References in text. — “This Act,” referred to in (f), is the Act of November 17, 1979, 93 Stat. 866, Pub. L. 96-122.

Mayor authorized to hire actuary. — Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply

with the requirements of §§ 1-722(d) and 1-724(d).

Full Funding of Pension Liability Retirement Reform Amendment Act of 1994.

— Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title 1 §§ 101 (b)(1) and (2), and titles II and III, shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters’ Retirement Fund, the Teachers’ Retirement Fund and the Judges’ Retirement Fund on and after October 1, 1995.

Pursuant to the effective date language in § 501 of D.C. Law 10-135, the amendments made by that act have not been given effect.

Cited in District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428 (D.D.C. 1987).

§ 1-725. Reduction in federal payment to Police Officers and Fire Fighters’ Retirement Fund resulting from disability retirements.

(a)(1) After January 1st, and before March 1st, of each year beginning with calendar year 1984 and ending with calendar year 2004, the enrolled actuary engaged pursuant to § 1-722 shall, with respect to the District of Columbia Police Officers and Fire Fighters’ Retirement Fund:

(A) Determine, in accordance with paragraph (2) of this subsection, the disability retirement rate for the preceding calendar year; and

(B) Determine if such disability retirement rate for such preceding calendar year is greater than eight tenths of a percentage point.

(2) For the purposes of subparagraph (A) of paragraph (1) of this subsection, the disability retirement rate for the applicable calendar year shall be an amount equal to a fraction, the numerator of which is the number of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who first became officers or members on or before February 14, 1980, and who retired on disability during such applicable year under § 4-615(a) or § 4-616(a) (but such numerator shall not include any such officer or member whose retirement is ordered by a court of competent jurisdiction), and the denominator of which is the total number of such officers

and members who were on active duty on January 1st of such applicable calendar year.

(3) The enrolled actuary shall report the determinations (including related documents and information) made under paragraph (1) of this subsection to the Board and to the Comptroller General of the United States not later than March 1st of each year.

(b) The Board shall transmit a copy of each such report by the enrolled actuary under subsection (a) of this section to the Speaker of the House of Representatives, the President pro tempore of the Senate, the chairman of the Committee on Governmental Affairs of the Senate, the chairman of the Committee on the District of Columbia of the House of Representatives, the chairman of the Committee on Appropriations of the Senate, the chairman of the Committee on Appropriations of the House of Representatives, the Mayor of the District of Columbia, and the Council of the District of Columbia, not later than March 31st of the calendar year in which the report is made, and shall submit comments on such report.

(c)(1) Notwithstanding any other provision of this chapter, with respect to the fiscal year commencing October 1, 1984, and each fiscal year thereafter through the fiscal year commencing October 1, 2004, the authorization under § 1-724(a)(1) for each such fiscal year shall be deemed, for purposes of such section, to be reduced in the amount hereafter provided, if the report, submitted by the enrolled actuary pursuant to subsection (a) of this section in the calendar year in which such fiscal year commences, states that the disability retirement rate under subsection (a) of this section for the preceding calendar year is greater than eight tenths of a percentage point. The amount of such reduction shall be 1½ per centum for each whole tenth of a percentage point by which the disability retirement rate is greater than eight tenths of a percentage point.

(2) There shall be no reduction pursuant to § 1-724(a)(1) and paragraph (1) of this subsection for any such fiscal year, if, in computing the disability retirement rate under subsection (a) of this section for the calendar year preceding the calendar year in which such fiscal year commences, the numerator is less than 8.

(3)(A) If the Board determines, on the basis of substantial facts, that unordinary circumstances or events of catastrophic magnitude, such as a fire or civil disorder, caused or significantly contributed to the number of disability retirements under § 4-616(a) during a calendar year covered by the report submitted by the enrolled actuary pursuant to subsection (a) of this section, it shall submit a detailed statement on such circumstances and events to the Federal Emergency Management Agency. Such statement shall be submitted on or before July 1st of the calendar year next following the calendar year covered by such report. The statement shall contain, among other matters, data on the total number of disability retirements under §§ 4-615(a) and 4-616(a) for the applicable calendar year, the number of such retirements under § 4-616(a) which, in the opinion of the Board, were caused or significantly contributed to by such circumstances or events, and an explanation as to why the Board considers such events or circumstances to be unordinary and of a catastrophic magnitude.

(B) The Federal Emergency Management Agency shall review the Board's report and provide the Board its assessment within 60 days of receipt of the Board's report, of the scope, nature, involvement, and impact on District of Columbia police officers and firefighters of the events determined by the Board to be of unordinary and of a catastrophic nature. The Agency shall submit copies of its assessment to the Board and the offices and officers set forth in subsection (b) of this section.

(C)(1) The Board, on the basis of such reports from the Federal Emergency Management Agency, shall determine the extent to which such disability retirements which such Agency determined were caused or contributed to by such events and circumstances caused a reduction in the amount appropriated to the Fund as provided under this subsection. The Board shall report the amount of such reduction so caused to the offices and officers set forth in subsection (b)(1) of this section. Such reports shall be submitted on or before December 31st of the calendar year in which the Board receives such report of the Federal Emergency Management Agency.

(2) In addition to the amount authorized to be appropriated to the Fund for any fiscal year under § 1-724(a)(1), there is authorized to be appropriated for the fiscal year commencing October 1, 1984, and each fiscal year thereafter, such sum as may be necessary to pay to the Fund an amount equal to the amount of any reduction, plus interest lost to the Fund because of the reduction, for a fiscal year as reported to the offices and officers of the Congress pursuant to paragraph (1) of this subsection, but in no case shall any moneys be appropriated on the basis of the authorization pursuant to this paragraph except to the extent that any such reduction was actually made. (1973 Ed., § 1-1825; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 145; Sept. 30, 1983, 97 Stat. 727, Pub. L. 98-104; June 30, 1994, D.C. Law 10-135, § 201(b)(2), 41 DCR 2618; Oct. 29, 1997, 110 Stat. 3841, Pub. L. 104-316, § 129.)

Section references. — This section is referred to in §§ 1-722 and 1-724.

Effect of amendments. — Section 129 of Pub. L. 104-316, 110 Stat. 3841, in (b), deleted former (2) and (3), deleted "and the Comptroller General" following "The Board," deleted "each" preceding "transmit a copy," and deleted "each" preceding "shall submit comments"; in (c)(1), substituted "enrolled actuary pursuant to subsection (a)" for "Comptroller General pursuant to subsection (b)"; in (c)(3)(A), substituted "enrolled actuary pursuant to subsection (a)" for "Comptroller General pursuant to subsection (b)," deleted "and the Comptroller General" following "Federal Emergency Management Agency," and deleted "of the Comptroller General" following "covered by such report"; in (c)(3)(B), deleted "Comptroller General" preceding "the Board" in the second sentence; in (c)(3)(C)(1), substituted "The Board, on the basis of such reports from" for "The Comptroller General, on the basis of such reports from the Board and," substituted "The Board shall re-

port the amount of such reduction so caused" for "The Comptroller General shall report the amount of such reduction so caused to the Board and," and substituted "the Board receives" for "he receives"; and in (c)(3)(C)(2), deleted "by the Comptroller General" following "for a fiscal year as reported."

Exclusion for certain retirees. — Section 133(a) of Pub. L. 102-111, the District of Columbia Appropriations Act, 1992, provided that up to 75 officers or members of the Metropolitan Police Department who were hired before February 14, 1980, and who retire on disability retirement under subsection (a) of this section, for purposes of reducing the authorized Federal payment to the District of Columbia Police Officers' and Fire Fighters' Retirement Fund pursuant to subsection (c) of this section.

Mayor authorized to hire actuary. — Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an

enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of §§ 1-722(d) and 1-724(d).

Subchapter IV. Reporting and Disclosure Requirements.

§ 1-731. Personal financial disclosure by Board members.

(a)(1) Each member of the Board shall, within 90 days of his selection as a member of the Board and not later than April 30th of each year thereafter, submit to the Mayor, the Council, the Speaker, and the President pro tempore a personal financial disclosure statement with respect to the preceding calendar year. Such statement shall be in such form as the Council may by regulation require and shall contain such information with respect to the member's financial condition as the Council may by regulation require, including the following information:

(A) The amount and source of all income (as defined in § 61 of the Internal Revenue Code of 1954) received during the year;

(B) The identity and category of value of each liability owned, directly or indirectly, that exceeds \$2,500 as of the last day of the year (excluding any mortgage that secures real property that is the principal residence of such member);

(C) The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income that has a fair market value of not less than \$1,000 as of the last day of the year;

(D) The identity and category of value of any transaction, whether direct or indirect, in securities or commodities futures during the year in excess of \$1,000 (excluding any gift to any tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code of 1954), and the identity, date, and category of value of any purchase or sale, whether direct or indirect, of any interest in real or tangible personal property during the year the value of which exceeds \$1,000 at the time of such purchase or sale (excluding any purchase or sale of any property that is the principal residence of such member or that is used as furnishings for such principal residence);

(E) The nature and extent of any interest during the year in any bank, insurance company, or other financial institution, or in any brokerage or other securities or investment company; and

(F) The nature and extent of any employment during the year by any bank, insurance company, or other financial institution, or by any brokerage or other securities or investment company.

(2) A member shall not be required to submit a personal financial disclosure statement to the Speaker and the President pro tempore for calendar years after calendar year 2004.

(b) For purposes of subparagraphs (B), (C), and (D) of paragraph (1) of subsection (a) of this section, the member reporting need not specify the actual amount of value of each item required to be reported under such subparagraphs, but shall indicate which of the following categories such amount or value is within:

- (1) Not more than \$5,000;
- (2) Greater than \$5,000 but not more than \$15,000;
- (3) Greater than \$15,000 but not more than \$50,000;
- (4) Greater than \$50,000 but not more than \$100,000; or
- (5) Greater than \$100,000. (1973 Ed., § 1-1831; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 161.)

References in text. — The Internal Revenue Code of 1954, referred to in subsection (a)(1)(A) and (D), is Title 26 of the United States Code.

New implementing regulations. — Pursuant to this section, the following new regula-

tions were adopted in 1983: The “District of Columbia Retirement Board First Regulations Adoption Act of 1983” (D.C. Law 5-11, June 22, 1983, 30 DCR 2300).

§ 1-732. Annual report.

(a)(1)(A) The Board shall publish an annual report for each fiscal year (beginning with fiscal year 1980) with respect to each retirement program to which this chapter applies and with respect to the Fund for such retirement program. Such report shall be filed with the Mayor, the Council, the Speaker, and the President pro tempore in accordance with § 1-734(a) and shall be made available and furnished to participants and beneficiaries in accordance with § 1-734(b).

(B) The annual report shall include the information described in subsections (b), (c), (d), and (e) of this section and, when applicable, subsection (f) of this section, and shall also include:

(i) The financial statement and opinion required by paragraph (3) of this subsection; and

(ii) The actuarial statement and opinion required by paragraph (4) of this subsection.

(2) If some or all of the information needed to enable the Board to comply with the requirements of this chapter is maintained by: (A) An insurance carrier or other organization which provides some or all of the benefits under the retirement program, or holds assets of the Fund for such retirement program in a separate account; (B) a bank or similar institution which holds some or all of the assets of the Fund in a common or collective trust or a separate trust, or custodial account; or (C) the Mayor (or the Police and Firemen’s Retirement and Relief Board, established pursuant to § 4-628, in carrying out the Mayor’s responsibilities under the Policemen and Firemen’s Retirement and Disability Act (D.C. Code, § 4-607 et seq.)); such carrier, organization, bank, or institution, or the Mayor, shall transmit and certify the accuracy of such information to the Board within 120 days after the end of the fiscal year (or such other date as may be prescribed under regulations of the Board).

(3)(A) Except as provided in subparagraph (C) of this paragraph, the Board shall engage an independent qualified public accountant who shall conduct such examination of any financial statements of the Fund, and of other books and records of the Fund or the retirement program as the accountant may deem necessary to enable the accountant to form an opinion as to whether

the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the Fund and the retirement program as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(2) of this section and the summary material required under § 1-734(b)(2) present fairly, and in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountants shall be made a part of the annual report.

(B) In offering his opinion under this section, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if he so states his reliance.

(C) The opinion required by subparagraph (A) of this paragraph need not be expressed as to any statements required by subsection (b)(2)(G) of this section prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a state or federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(4)(A) The Board shall engage an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section: (i) Are in the aggregate reasonably related to the experience of the Fund and the retirement program and to reasonable expectations; and (ii) represent his best estimate of anticipated experience under the Fund and the retirement program. The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) In making a certification under this section, the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) of this section as to which any qualified public accountant has expressed an opinion if he so states his reliance.

(b)(1) An annual report under this section shall include a financial statement containing a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the retirement program, which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: A description of the retirement program, including any significant changes in the retirement program made during the period and the impact of such changes on benefits; the funding policy (including the policy

with respect to prior service cost), and any changes in such policy during the year; a description of any significant changes in benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; and any other matters necessary to fully and fairly present the financial statements of the Fund.

(2) The statement required under paragraph (1) of this subsection shall have attached the following information in separate schedules;

(A) A statement of the assets and liabilities of the Fund, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year;

(B) A statement of receipts in and disbursements from the Fund during the preceding 12-month period, aggregated by general source and application;

(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) A schedule of each transaction involving a person known to be a party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the Fund, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction;

(E) A schedule of all loans or fixed income obligations which were in default as of the close of the fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): The original principal amount of the loan; the amount of principal and interest received during the reporting year; the unpaid balance; the identity and address of the obligor; a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms); the amount of principal and interest overdue (if any) and an explanation thereof;

(F) A list of all leases which were in default or were classified during the year as uncollectable and the following information with respect to each lease on such list (including a notation as to whether parties involved are known to be parties in interest): The type of property leased (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the property); the identity of the lessor or lessee from or to whom the Fund is leasing; the relationship of such lessors and lessees, if any, to the Fund, the government of the District of Columbia, any employee organization, or any other party in interest; the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost; the date the property was leased and its approximate value at

such date; the gross rental receipts during the reporting period; expenses paid for the leased property during the reporting period; the net receipts from the lease; the amounts in arrears; and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Fund are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Fund are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Fund are held, and in the case of a separate account or a separate trust, such other information as may be required by the Board in order to comply with this subsection; and

(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(3) For purposes of subparagraph (H) of paragraph (2) of this subsection, the term "reportable transaction" means a transaction to which the Fund is a party and which is:

(A) A transaction involving an amount in excess of 3 percent of the current value of the assets of the Fund;

(B) Any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the Fund;

(C) A transaction which is part of a series of transactions respecting 1 or more securities of the same issuer, if the aggregate amount of such transactions in the fiscal year exceeds 3 percent of the current value of the assets of the Fund; or

(D) A transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A) of this paragraph.

(c) The Board shall furnish as a part of an annual report under this section the following information:

(1) The number of individuals covered by the retirement program;

(2) The name and address of each member of the Board;

(3) Except in the case of a person whose compensation is minimal (as determined under regulations of the Council, which regulations the Council shall initially promulgate within 90 days after the date of the enactment of this chapter and who performs solely ministerial duties as determined under such regulations), the name of each person (including any consultant, broker,

trustee, accountant, insurance carrier, actuary, administrator, investment counsel, or custodian who rendered services to the Board or who had transactions with the Board) who directly or indirectly received compensation from the Board during the preceding year for services rendered to the Board or the participants or beneficiaries of the retirement program for which a Fund was established, the amount of such compensation, the nature of his services, his relationship, if any, to the District of Columbia government or any employee organization, and any other officer, position or employment he holds with any party in interest;

(4) An explanation of the reason for any change in appointment of any accountant, insurance carrier, enrolled actuary, or investment counsel appointed by the Board; and

(5) Such other financial and actuarial information as the Council may by regulation prescribe.

(d)(1) An annual report under this section for a fiscal year shall include a complete actuarial statement applicable to the fiscal year which shall include the following information:

(A) The date of the actuarial valuation applicable to the fiscal year for which the report is filed;

(B) The date and amount of the payments to the Fund for the fiscal year for which the report is filed and contributions for prior fiscal years not previously reported, including payments by the participants, the United States, and the District of Columbia;

(C) The following information applicable to the fiscal year for which the report is filed:

(i) The amounts determined under § 1-722(a)(1);

(ii) The accrued liabilities;

(iii) An identification of benefits not included in the calculation;

(iv) A statement of the other facts and actuarial assumptions and methods used to determine costs; and

(v) A justification for any change in actuarial assumptions or cost methods;

(D) The number of participants and beneficiaries covered by the retirement program;

(E) A certification of the amount of the payments to the Fund necessary to reduce the accumulated funding deficiency to zero;

(F) A statement by the enrolled actuary of any change in actuarial assumptions made with respect to the Fund during the year;

(G) A statement by the enrolled actuary of the estimated current value of vested benefits under the retirement program;

(H) A statement by the enrolled actuary that to the best of his knowledge the report is complete and accurate;

(I) A copy of the opinion required by subsection (a)(4) of this section;

(J) Such other information regarding the retirement program as the Council may by regulation require; and

(K) Such other information as the enrolled actuary may determine is necessary to fully and fairly disclose the actuarial position of the Fund.

(2) The actuary shall make an actuarial valuation of the Fund for every 3rd fiscal year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) A report under this section for a fiscal year shall include a statement prepared by the Board of:

(1) The relative riskiness of the investments during the fiscal year of the assets of the Fund;

(2) A comparison of the average return on the investments of the Fund during the year with the average return on the investments of other public pension funds during the year that have comparable asset valuation; and

(3) The average daily balance of, and the average rate earned by, assets of the Fund in each of any time or demand deposits during the year.

(f)(1) If some or all of the benefits under the retirement program are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating:

(A) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(B) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose.

(2) If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include, in lieu of the information required by subparagraph (B) of paragraph (1) of this subsection, a statement as the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the Fund, and a copy of the financial report of the company, service, or other organization and, if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular Fund or Funds, a detailed statement of such costs. (1973 Ed., § 1-1832; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 162; June 30, 1994, D.C. Law 10-135, § 201(b)(3), 41 DCR 2618.)

Section references. — This section is referred to in §§ 1-711, 1-722, 1-734, and 1-784.3.

Transmittal required by Board. — Public Law 104-194, 110 Stat. 2363, the District of Columbia Appropriations Act, 1997, provided that the District of Columbia Retirement Board shall provide to the Congress and to the Council

of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: Provided further, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an item accounting of the planned use of appropriated funds in

time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

§ 1-733. Retirement program summary description.

(a)(1) A summary description of each retirement program to which this chapter applies shall be furnished to participants and beneficiaries as provided in § 1-734(b). The summary description shall include the information specified in subsection (b) of this section, shall be written in a manner calculated to be understood by the average participant or beneficiary, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the retirement program.

(2) A summary of any material modification in the terms of the retirement program and any change in the information required under subsection (b) of this section, written in a manner calculated to be understood by the average participant or beneficiary, shall be furnished in accordance with § 1-734(b)(1).

(b) Each summary description of a retirement program shall contain the following information:

- (1) The name and type of administration of the retirement program;
- (2) The name and address of the Chairman of the Board, who shall be the agent of the Board for the service of legal process;
- (3) The name, title, and address of each member of the Board;
- (4) A description of the relevant provisions of applicable collective-bargaining agreements;
- (5) The retirement program's requirements respecting eligibility for participation and benefits;
- (6) A description of the provisions providing for nonforfeitable pension benefits;
- (7) Circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;
- (8) The identity of any organization through which benefits are provided;
- (9) The procedures to be followed in presenting claims for benefits under the retirement program; and
- (10) The remedies available under the retirement program for the redress of claims that are denied in whole or in part. (1973 Ed., § 1-1833; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 163.)

Section references. — This section is referred to in § 1-734.

§ 1-734. Filing reports and furnishing information to participants.

(a)(1) The Board shall file with the Mayor, the Council, the Speaker, and the President pro tempore: (A) the annual reports for a fiscal year within 210 days after the end of such year; (B) a copy of each summary description of a retirement program within 1 year after the date of the enactment of this chapter; and (C) a revised summary description of a retirement program, incorporating any material modification in the terms of the retirement

program, within 60 days after such modification is adopted or occurs. The Mayor shall make copies of such retirement program descriptions and annual reports available for public inspection in an appropriate location. The Board shall also furnish to the Mayor, the Council, the Speaker, and the President pro tempore, upon request, any documents relating to the retirement program or the Fund, including any bargaining agreement, trust agreement, contract, or other instrument under which the retirement program or Fund is operated.

(2)(A) The Mayor or the Council may reject any filing under this section within 30 days of such filing:

(i) Upon determining that such filing is incomplete for purposes of this chapter; or

(ii) Upon determining that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to § 1-732(a)(3)(A) or § 1-732(a)(4)(B).

(B) If the Mayor or the Council rejects a filing of a report under subparagraph (A) of this paragraph, and if a revised filing satisfactory to the Mayor or the Council is not submitted within 45 days after the determination under subparagraph (A) of this paragraph to reject the filing is made, and if the Mayor or the Council considers it in the best interest of the participants, then the Mayor or the Council may take any 1 or more of the following actions: (i) Retain an independent qualified public accountant on behalf of the participants to perform an audit; (ii) retain an enrolled actuary on behalf of the participants to prepare an actuarial statement; or (iii) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this chapter. The Board shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund are necessary for such audit.

(3)(A) The Congress may reject any filing under this section within 30 days of such filing by enacting into law a joint resolution stating that the Congress has determined:

(i) That such filing is incomplete for purposes of this subchapter; or

(ii) That there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to § 1-732(a)(3)(A) or § 1-732(a)(4)(B).

(B) If the Congress rejects a filing under subparagraph (A) of this paragraph and if either a revised filing is not submitted within 45 days after the enactment under subparagraph (A) of this paragraph rejecting the initial filing or such revised filing is rejected by the Congress by enactment into law of a joint resolution within 30 days after submission of the revised filing, then the Congress may, if it deems it is in the best interests of the participants, take any 1 or more of the following actions:

(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit; or

(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

The Board and the Mayor shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund and the retirement program are necessary for performing such audit or preparing such statement.

(C) If a revised filing is rejected under subparagraph (B) of this paragraph or if a filing required under this chapter is not made by the date specified, no funds appropriated for the Fund with respect to which such filing was required as part of the federal payment may be paid to the Fund until such time as an acceptable filing is made. For purposes of this subparagraph, a filing is unacceptable if, within 30 days of its submission, the Congress enacts into law a joint resolution disapproving such filing.

(b) Publication of the summary retirement program descriptions and annual reports shall be made to participants and beneficiaries as follows:

(1) The Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the summary retirement program description and all modifications and changes referred to in § 1-733(a) within 90 days after he becomes a participant or in the case of a beneficiary, within 90 days after he first receives benefits. The Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, every 5th year an updated summary retirement program description described in § 1-733 which integrates all retirement program amendments made within such 5-year period, except that in a case where no amendments have been made to a retirement program during such 5-year period this sentence shall not apply. Notwithstanding the foregoing sentence, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, the summary retirement program description described in § 1-733 every 10th year. If there is a modification or change described in § 1-733(a) a summary description of such modification or change shall be furnished to each participant and to each beneficiary who is receiving benefits under the retirement program not later than 210 days after the end of the fiscal year in which the change is adopted.

(2) The Board shall make copies of the latest annual report and of any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or the Fund is operated available for examination by any participant or beneficiary in the principal office of the Board and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Council may by regulation prescribe).

(3) Within 210 days after the close of the fiscal year, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the statements and schedules described in subparagraphs (A) and (B) of § 1-732(b)(2) for such fiscal year and such other material as is necessary to fairly summarize the latest annual report.

(4) The Board shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary retirement program description, the latest annual report, and any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or Fund is operated. The Board may make a reasonable charge to cover the cost of furnishing such copies. The Council may by regulation prescribe the maximum amount that will constitute a reasonable charge under the preceding sentence.

(c) The Council may by regulation require that the Board furnish to each participant and to each beneficiary receiving benefits under a retirement program a statement of the rights of participants and beneficiaries under this chapter. (1973 Ed., § 1-1834; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 164; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(m).)

Section references. — This section is referred to in §§ 1-732 and 1-733.

§ 1-735. Reporting of participants' benefit rights.

(a) The Board shall furnish to any participant or beneficiary who so requests in writing a statement indicating, on the basis of the latest available information:

- (1) The total benefits accrued; and
- (2) The nonforfeitable retirement benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) A participant or beneficiary is not entitled to receive more than 1 report under subsection (a) of this section during any 12-month period. (1973 Ed., § 1-1835; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 165.)

Section references. — This section is referred to in §§ 1-736 and 1-739.

§ 1-736. Public information.

(a) Except as provided in subsection (b) of this section, the contents of the descriptions, annual reports, statements, and other documents filed with the Mayor, the Council, the Speaker, and the President pro tempore pursuant to this subchapter shall be public information, and the Mayor, the Council, the Speaker, and the President pro tempore shall each make such documents available for inspection in an appropriate location. The Mayor, the Council, the Speaker, and the President pro tempore may use the information and data in such documents for statistical and research purposes and may compile and publish such studies, analyses, reports, and surveys based thereon as may be considered appropriate.

(b) Information described in § 1-735(a) with respect to a participant or beneficiary of a retirement program may be disclosed only to the extent that information respecting that participant's or beneficiary's benefits under Title II of the Social Security Act may be disclosed under such Act.

(c) Except to the extent that information which is protected from public disclosure under subsection (b) of this section, or which relates to personnel matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is involved, all meetings of the Board shall be open to the public. (1973 Ed., § 1-1836; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 166.)

Section references. — This section is referred to in § 1-737.

Security Act," referred to in (b), is 42 U.S.C. § 401 et seq.

References in text. — "Title II of the Social

§ 1-737. Retention of records.

The Board shall maintain records on the matters required to be disclosed by this chapter which will provide in sufficient detail the necessary basic information and data from which the required documents may be verified, explained, or clarified, and checked for accuracy and completeness, shall include vouchers, worksheets, receipts, and applicable resolutions in such records, and shall keep such records available for examination for a period of not less than 6 years after the filing date of the documents based on the information which they contain. Except to the extent that information is involved which is protected from public disclosure under § 1-736(b), all such records shall be available for inspection by the public. (1973 Ed., § 1-1837; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 167.)

§ 1-738. Additional information.

(a) In addition to the information specifically required to be furnished by this subchapter, the Board shall furnish promptly such additional information as the Mayor, the Council, the Speaker, or the President pro tempore may request.

(b) The Board shall, at regular intervals to be determined by the Board, compile and publish all regulations then in effect which were issued by the Board or the Council under this chapter. (1973 Ed., § 1-1838; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 168.)

Section references. — This section is referred to in § 1-739.

§ 1-739. Criminal penalties.

Whoever willfully violates any provision of this subchapter (other than §§ 1-735 and 1-738), or any regulation or order issued under any such provision, shall be fined not more than \$5,000, or imprisoned not more than 1 year, or both, except that in the case of such a violation by a person not an individual, such person shall be fined not more than \$100,000. (1973 Ed., § 1-1839; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 169.)

Subchapter V. Fiduciary Responsibility; Civil Sanctions.

§ 1-741. Fiduciary responsibilities.

(a)(1) The Board, each member of the Board, and each person defined in § 1-702(20) shall discharge responsibilities with respect to a Fund as a fiduciary with respect to the Fund. The Board may designate one or more other persons who exercise responsibilities with respect to a Fund to exercise such responsibilities as a fiduciary with respect to such Fund. The Board shall retain such fiduciary responsibility for the exercise of careful, skillful, prudent, and diligent oversight of any person so designated as would be exercised by a prudent individual acting in a like capacity and familiar with such matters under like circumstances.

(2) A fiduciary shall discharge his duties with respect to a Fund solely in the interest of the participants and beneficiaries and:

(A) For the exclusive purpose of providing benefits to participants and their beneficiaries;

(B) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) In accordance with the provisions of law, documents, and instruments governing the retirement program to the extent that such documents and instruments are consistent with the provisions of this chapter.

(b) In addition to any liability which he may have under any other provision of this subchapter, a fiduciary with respect to a Fund shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same Fund:

(1) If he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach of fiduciary responsibility;

(2) If, by his failure to comply with subsection (a)(2) of this section in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach of fiduciary responsibility; or

(3) If he has knowledge of a breach of fiduciary responsibility by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(c) Except as provided in subsections (f), (g), and (h) of this section, a fiduciary with respect to a Fund shall not cause the Fund to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect:

(1) Sale or exchange, or leasing, of any property between the Fund and a party in interest;

(2) Lending of money or other extension of credit between the Fund and a party in interest;

(3) Furnishing of goods, services, or facilities between the Fund and a party in interest; or

(4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the Fund.

(d) Except as provided in subsection (h) of this section, a fiduciary with respect to a Fund shall not:

(1) Deal with the assets of the Fund in his own interest or for his own account;

(2) In his individual or in any other capacity act in any transaction involving the Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Fund or the interests of its participants or beneficiaries; or

(3) Receive any consideration for his own personal account from any party dealing with such Fund in connection with a transaction involving the assets of the Fund.

(e) A transfer of real or personal property by a party in interest to a Fund shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the Fund assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of the transfer.

(f) The prohibitions provided in subsection (c) of this section shall not apply to any of the following transactions:

(1) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Fund, if no more than reasonable compensation is paid therefor;

(2) The investment of all or part of a Fund's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such Fund and if such investment is expressly authorized by regulations of the Board or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the Board to make such investment;

(3) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a state if such bank or other institution is a fiduciary of such Fund and if:

(A) Such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by federal or state supervisory authority; and

(B) The extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Mayor after consultation with federal and state supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of the retirement program. Such ancillary services shall not be provided at more than reasonable compensation;

(4) The exercise of a privilege to convert securities, to the extent provided in regulations of the Council, but only if the Fund receives no less than adequate consideration pursuant to such conversion; or

(5) Any transaction between a Fund and a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a state or federal agency, or a pooled investment fund of an insurance company qualified to do business in a state, if:

(A) The transaction is a sale or purchase of an interest in the fund;

(B) The bank, trust company, or insurance company receives not more than reasonable compensation; and

(C) Such transaction is expressly permitted by the Board, or by a fiduciary (other than the bank, trust company, insurance company, or an

affiliate thereof) who has authority to manage and control the assets of the Fund.

(g) Nothing in subsection (c) of this section shall be construed to prohibit any fiduciary from:

(1) Receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement program, so long as the benefit is computed and paid on a basis which is consistent with the terms of the retirement program as applied to all other participants and beneficiaries;

(2) Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with respect to the Fund; or

(3) Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(h) The Board may from time to time submit to the Council for its approval by resolution proposed exemptions from all or part of the restrictions imposed by subsections (c) and (d) of this section. The Board shall only request exemptions that have been granted by the United States Secretary of Labor. Prior to the submission to the Council of any proposed exemption, the Board shall hold a public hearing on the proposed exemption. Notice of the time, place, and subject matter of the public hearing shall be published in the D.C. Register at least 15 days in advance of its scheduled date in order to afford interested persons an opportunity to present their views. Prior to or simultaneous with the submission of a proposed exemption to the Council, the proposed exemption shall be published by the Board in the D.C. Register. Any proposed exemption submitted to the Council shall be accompanied by a synopsis of the results of the public hearing held by the Board in connection with the proposed exemption, and written findings by the Board that the proposed exemption is:

(1) Administratively feasible;

(2) In the best interests of the funds and of their participants and beneficiaries; and

(3) Protective of the rights of participants and beneficiaries of these funds.

(i) For purposes of subsections (c) and (d) of this section, the assets of a Fund shall not include assets in a pooled separate account of an insurance company qualified to do business in a state or assets in a collective investment fund of a bank or similar financial institution supervised by the United States or any state, provided that:

(1) The interest of all Funds in the separate account or collective investment fund does not exceed 5% of the total of all assets in the account or fund; and

(2) At the time a transaction that would otherwise be prohibited by subsection (c) or (d) of this section is entered into, and at the time of any subsequent renewal which requires the approval of the bank or insurance company, the terms of the transaction are not less favorable to the pooled separate account or collective investment fund than the terms generally available in an arm's length transaction between unrelated parties. (1973 Ed., § 1-1841; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 181; Sept. 23, 1986,

D.C. Law 6-160, § 2, 33 DCR 5111; Feb. 24, 1987, D.C. Law 6-163, § 2, 33 DCR 6698; Mar. 24, 1990, D.C. Law 8-97, § 2(e), 37 DCR 1046; Sept. 10, 1992, D.C. Law 9-145, § 401(c), 39 DCR 4895; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, 139(a).)

Legislative history of Law 6-160. — Law 6-160 was introduced in Council and assigned Bill No. 6-488. The Bill was adopted on first and second readings on June 24, 1986 and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-205 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-163. — Law 6-163 was introduced in Council and assigned Bill No. 6-417, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-97. — See note to § 1-702.

Legislative history of Law 9-134. — See note to § 1-711.

Legislative history of Law 9-145. — See note to § 1-711.

Repeal of Title IV of D.C. Law 9-145. — Section 139(a) of Pub. L. 103-127, 107 Stat. 1349, provided that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

Approval of rules to establish administrative class exemptions. — Pursuant to Resolution 8-293, the “District of Columbia Retirement Board Administrative Class Exemptions Approval Resolution of 1990”, effective November 30, 1990, the Council approved the proposed rules to establish administrative class exemptions from prohibited transactions in order to permit the District of Columbia Retirement Board to participate in certain commercially reasonable and noncontroversial financial transactions.

Independent audit of Retirement Board. — Section 135 of Public Law 103-334, 108 Stat. 2586, the District of Columbia Appropriations Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and recommendations not later than 6 months after the date of enactment of this Act regarding the appropriateness and adequacy of the Retirement Board’s fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

§ 1-742. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a Fund who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this chapter shall be personally liable to make good to such Fund any losses to the Fund resulting from each such breach and to restore to such Fund any profits of such fiduciary which have been made through the use of assets of the Fund by the fiduciary and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this chapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary. (1973 Ed., § 1-1842; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 182.)

Section references. — This section is referred to in §§ 1-747 and 1-786.1.

§ 1-743. Exculpatory provisions; insurance.

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void as against public policy.

(b) Nothing in this section shall preclude:

(1) The Board from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) A fiduciary from purchasing insurance to cover liability under this subchapter from and for his own account; or

(3) An employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to the Fund from which the annuities and other retirement and disability benefits of the members of such employee organization are paid. (1973 Ed., § 1-1843; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 183.)

§ 1-744. Prohibition against certain persons holding certain positions.

(a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of federal or state law involving substances defined in § 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 802(6)), murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in § 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. § 80a-9(a)(1)), a violation of any provision of this chapter, a violation of § 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. § 186), a violation of Chapter 63 of Title 18, United States Code, a violation of § 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 401), or conspiracy to commit any such crime or attempt to commit any such crime, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve: (1) As a fiduciary, investment counsel, agent, or employee of any Fund established by this chapter; or (2) as a consultant to any Fund established by this chapter; during or for 5 years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such 5-year period, in the case of a person so convicted or imprisoned, his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) of this subsection would not be contrary to the purposes of this chapter. Prior to making any such determination the Board of Parole shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the state, county, and federal prosecuting officials in the jurisdiction or

jurisdictions in which such person was convicted. The Board of Parole's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) of this subsection in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any Fund established by this chapter, or as a consultant to any Fund established by this chapter, without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Whoever willfully violates this section shall be fined not more than \$10,000, or imprisoned for not more than 1 year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and to be under the disability of "conviction" from the date of entry of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents a Fund or who provides other assistance to such Fund concerning the operation of such Fund.

(3) A period of parole shall not be considered as part of a period of imprisonment. (1973 Ed., § 1-1844; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 184.)

Section references. — This section is referred to in § 1-711.

§ 1-745. Bonding.

(a)(1)(A) Each fiduciary of a Fund established by this chapter and each person who handles funds or other property of such a Fund (hereinafter in this section referred to as "Fund official") shall be bonded as provided in this section, except that no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary:

(i) Is a corporation organized and doing business under the laws of the United States or of any state;

(ii) Is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) Is subject to supervision or examination by federal or state authority; and

(iv) Has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Council, which amount shall be at least \$1,000,000.

(B) Sub-subparagraph (iv) of subparagraph (A) of this paragraph shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation only if such bank or institution meets bonding or similar requirements under state law which the Council determines are at least equivalent to those imposed on banks by federal law.

(2)(A) The amount of such bond shall be the lesser of 10 percent of the amount of the funds handled by such fiduciary and \$500,000, except that the amount of such bond shall be at least \$1,000.

(B) The Mayor, after notice and opportunity for hearing to such fiduciary and all other parties in interest to such Fund, may waive the \$500,000 limit.

(C) The amount of such bond shall be set at the beginning of each fiscal year.

(3) For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by the predecessor or predecessors, if any, during the preceding reporting year, or if the Fund has no preceding reporting year under this chapter, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations to be prescribed by the Council.

(4) Such bond shall provide protection to the Fund against loss by reason of acts of fraud or dishonesty on the part of the Fund official, directly or through connivance with others.

(5) Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted by the Secretary of the Treasury pursuant to §§ 6 through 13 of Title 6, United States Code. Any bond shall be in a form or of a type approved by the Council, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any Fund official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any Fund without being bonded as required by subsection (a) of this section, and it shall be unlawful for any Fund official or any other person having authority to direct the performance of such functions to permit such functions, or any of them, to be performed by any Fund official with respect to whom the requirements of subsection (a) of this section have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations the Fund or any party in interest in the Fund has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person required to be bonded as provided in subsection (a) of this section because he handles funds or other property of a Fund to be bonded insofar as the handling by such person of the funds or other property of such Fund is concerned.

(e) The Council shall prescribe such regulations as may be necessary to carry out the provisions of this section. (1973 Ed., § 1-1845; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 185.)

References in text. — “Sections 6 through 13 of Title 6, United States Code,” referred to in subsection (a)(5), were repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258, 96 Stat. 1068.

§ 1-746. Limitation on actions.

No action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this subchapter, or with respect to a violation of this subchapter, after the earlier of: (1) Six years after: (A) The date of the last action which constituted a part of the breach or violation; or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or (2) three years after the earliest date: (A) On which the plaintiff had actual knowledge of the breach or violation; or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Mayor, the Council, the Speaker, or the President pro tempore under this chapter; except that in the case of fraud or concealment, such an action may be commenced not later than 6 years after the date of discovery of such breach or violation. (1973 Ed., § 1-1846; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 186.)

§ 1-747. Civil enforcement.

(a) A civil action may be brought:

(1) By a participant or beneficiary:

(A) For the relief provided for in subsection (b) of this section; or

(B) To recover benefits due to him under the terms of his retirement program, to enforce his rights under the terms of the retirement program, or to clarify his rights to future benefits under the terms of the retirement program;

(2) By a participant or beneficiary, the District of Columbia, or the Board for appropriate relief under § 1-742; or

(3) By a participant or beneficiary, the District of Columbia, and the Board:

(A) To enjoin any act or practice which violates any provision of this chapter or the terms of a retirement program; or

(B) To obtain other appropriate equitable relief:

(i) To redress any such violation; or

(ii) To enforce any provision of this chapter or the terms of a retirement program.

(b) If the Board fails or refuses to comply with a request for any information which the Board is required by this chapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the Board) by mailing the information requested to the last known address of the requesting participant or beneficiary within 30 days after such request, then the Board may, in the court's discretion, be liable to such participant or beneficiary in an amount of up to \$100 a day from the date of such failure or refusal, and the court may order the Board to provide the required information and may in its discretion order such other relief as it considers proper.

(c) The Board may sue and be sued under this chapter as an entity. Service of summons, subpoena, or other legal process of a court upon the Chairman of the Board in his capacity as such shall constitute service upon the Board.

(d) In any action under this chapter by a participant, beneficiary, fiduciary, or the Board, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party. (1973 Ed., § 1-1847; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 187; Mar. 24, 1990, D.C. Law 8-97, § 2(f), 37 DCR 1046.)

Legislative history of Law 8-97. — See note to § 1-702.

§ 1-748. Claims procedure.

In accordance with regulations of the Council, the Mayor shall provide to any participant or beneficiary who has a claim for benefits under a retirement program denied:

(1) Adequate written notice of such denial, setting forth the specific reasons for such denial in a manner calculated to be understood by such participant or beneficiary; and

(2) A reasonable opportunity for a full and fair review of the decision denying such claim. (1973 Ed., § 1-1848; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 188.)

Delegation of authority under Law 4-123. — See Mayor's Order 83-245, October 14, 1983.

Subchapter VI. Denial of Claim for Retirement Benefits.

§ 1-751. Procedure enumerated.

(a) *Purpose.* — This section sets forth the procedures for the denial of a claim for retirement benefits under the chapter.

(b) *Filing of claim for benefits.* — For the purposes of this section, a claim is a request for a benefit by a participant or beneficiary of any of the Funds. A claim is filed when the procedure established by the Mayor for the initiation of claims has been met. Until such procedure has been established, a claim shall be deemed filed when a written communication is made by a claimant (or the claimant's authorized representative) which is reasonably calculated to bring the claim to the attention of the Director of Personnel and the written communication is received by the Director of Personnel.

(c) *Written notice of denial.* — (1) The Mayor shall provide to every claimant whose claim for benefits is wholly or partially denied a written notice setting forth in a manner calculated to be understood by the claimant:

(A) The specific reason or reasons for the denial;

(B) Specific reference to pertinent provisions of applicable law, regulations, or Fund procedures on which the denial is based;

(C) A description of any material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(D) Appropriate information as to the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

(2) If the claim is wholly or partially denied, written notice of the decision, meeting the requirements of paragraph (1) of this subsection, shall be furnished to the claimant within a reasonable time after receipt of the claim by the Mayor.

(3) If written notice of the denial of a claim is not furnished in accordance with paragraph (2) of this subsection within a reasonable time, the claimant shall be deemed to have exhausted his or her administrative remedies for the purpose of instituting proceedings for relief in the Superior Court for the District of Columbia, unless the claimant chooses to avail himself or herself of the procedures set forth in subsection (d) of this section.

(4) For the purposes of paragraphs (2) and (3) of this subsection, a reasonable period of time shall be no more than 90 calendar days after receipt of the claim by the Mayor, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-calendar-day period. In no event shall such extension exceed a period of 90 calendar days from the end of such initial period. The written notice of extension shall indicate the special circumstances requiring an extension of time and the date by which the Mayor expects to render the final decision.

(d) *Review.* — (1) The Mayor shall establish and maintain a procedure for each Fund, by which a claimant or his or her duly authorized representative has reasonable opportunity to appeal a denied claim to the Mayor or his or her designee, and under which full and fair review of the claim and its denial may be obtained. Every such procedure shall include, but not be limited to, provisions that permit a claimant or his or her duly authorized representative to:

- (A) Request a review upon written application to the Mayor;
- (B) Review pertinent documents; and
- (C) Submit issues and comments in writing.

(2) Such procedures may establish a limited period within which a claimant must file any request for review of a denial claim. Such time limits must be reasonable and related to the nature of the benefit which is the subject of the claim and to other attendant circumstances. In no event may such a period expire less than 60 calendar days after receipt by the claimant or written notification of the denial of a claim.

(3) A decision by the Mayor or his or her designees shall be made no later than 90 calendar days after the Mayor's receipt of a request for review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 calendar days after receipt of a request for review. If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

(4) The decision on review shall be in writing and shall be written in a manner calculated to be understood by the claimant. The written decision shall include specific reasons for the decision and shall cite specific references to the

pertinent provisions of applicable law, regulation, or Fund procedures on which the decision is based.

(5) The decision on review shall be furnished to the claimant within the appropriate time prescribed in paragraph (3) of this subsection. If the decision on review is not furnished within such time, the claim shall be deemed denied on review.

(e) *Reasonableness.* — For purposes of this subchapter, a procedure will be deemed to be reasonable only if it does not contain any provision, and is not administered in a way, which unduly inhibits or hampers the initiation or processing of a claim for benefits. (July 2, 1982, D.C. Law 4-123, § 2, 29 DCR 2084.)

Legislative history of Law 4-123. — Law 4-123, the “District of Columbia Retirement Regulations Adoption Act of 1982,” was introduced in Council and assigned Bill No. 4-377, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 6, 1982 and

April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-188 and transmitted to both Houses of Congress for its review.

Delegation of authority under Law 4-123. — See Mayor’s Order 83-245, October 14, 1983.

§ 1-752. Application of procedure.

(a) The procedure established by this subchapter shall apply to any participant or beneficiary who has a claim for benefits denied under the District of Columbia Police Officers and Fire Fighters’ Retirement Fund, established by § 1-712; the District of Columbia Teachers’ Retirement Fund, established by § 1-713; and the District of Columbia Judges’ Retirement Fund, established by § 1-714.

(b) The procedure established by this subchapter shall apply to claims for benefits denied after March 1, 1982. (July 2, 1982, D.C. Law 4-123, § 3, 29 DCR 2084.)

Legislative history of Law 4-123. — See note to § 1-751.

§ 1-753. Compliance by Mayor.

The Mayor of the District of Columbia shall comply with the requirements of these regulations and shall give written notice of compliance therewith to the Council of the District of Columbia within 60 calendar days after July 2, 1982. (July 2, 1982, D.C. Law 4-123, § 4, 29 DCR 2084.)

Emergency act amendments. — For temporary establishment of an actuarially sound retirement replacement plan for pension benefits accrued after June 30, 1997, for police officers, fire fighters, and teachers, see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congress-

sional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531), see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673), and see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of

1997 Technical Amendments Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

Section 207 of D.C. Act 12-155 provides for the application of the act.

Legislative history of Law 4-123. — See note to § 1-751.

Legislative history of Law 12-58. — See note to § 1-711.

Retirement replacement plan. — Sections 101 through 204 of D.C. Law 12-58 provide for the temporary establishment of replacement retirement plans for pension benefits accrued

after June 30, 1997, for police officers, fire fighters, and teachers, and provide for the full funding and management on an actuarially sound basis of all retirement funds entrusted to the District government for the benefit of teachers, members and officers of the Metropolitan Police Department, and employees of the D.C. Fire and Emergency Medical Services Department.

Section 209(b) of D.C. Law 12-58 provides that the act shall expire after 225 days of its having taken effect.

CHAPTER 7A. DISTRICT OF COLUMBIA RETIREMENT FUNDS.

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Subchapter I. Short Title, Findings, Definitions.

§ 1-761.1. Findings and declaration of policy.

(a) *Findings.* — The Congress finds that:

(1) State and municipal retirement programs should be funded on an actuarially sound basis;

(2) The retirement programs for the police officers and firefighters, teachers and judges of the District of Columbia had significant unfunded liabilities totaling approximately \$1,900,000,000 when the Federal government transferred those programs to the District of Columbia, and those liabilities have since increased to nearly \$4,800,000,000, an increase which is almost entirely attributable to the accumulation of interest on the value which existed at the time of transfer;

(3) The District of Columbia has fully met its financial obligations under the District of Columbia Retirement Reform Act of 1979 (Public Law 96-122);

(4) The growth of the unfunded liabilities of the three pension funds listed above did not occur because of any action taken or any failure to act that lay within the power of the District of Columbia government or the District of Columbia Retirement Board;

(5) The presence of the unfunded pension liability is having and will continue to have a negative impact on the District of Columbia's credit rating as it is a legal obligation and the total unfunded liability exceeds the total General Obligation debt of the District, and the costs associated with this liability are a contributing cause of the District's ongoing financial crisis;

(6) The obligations of the District associated with these pension programs in fiscal year 1997 represents nearly 10 percent of the District's revenue;

(7) The annual Federal contribution toward these costs under the District of Columbia Retirement Reform Act has remained \$52,000,000;

(8) If the unfunded pension liability situation is not resolved, in 2004 the District of Columbia would be responsible for annual costs exceeding \$800,000,000, a figure which would be impossible to meet without catastrophic impact on the District government's resources and programs;

(9) The financial resources of the District of Columbia are not adequate to discharge the unfunded liabilities of the retirement programs; and

(10) The level of benefits and funding of the current retirement programs were authorized by various Acts of Congress.

(b) *Policy.* — It is the policy of this chapter:

(1) To relieve the District of Columbia government of the responsibility for the unfunded pension liabilities transferred to it by the Federal government;

(2) For the Federal government to assume the legal responsibility for paying certain pension benefits (including certain unfunded pension liabilities which existed as of the day prior to introduction of this legislation) for the retirement plans of teachers, police, and firefighters;

(3) To provide for a responsible Federal system for payment of benefits accrued prior to the date of introduction of this legislation; and

(4) To require the establishment of replacement plans by the District of Columbia government for the current retirement plans for teachers, and police and firefighters. (Aug. 5, 1997, 111 Stat. 715, Pub. L. 105-33, § 11002.)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the require-

ments of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

District of Columbia Retirement Protection Act of 1997. — Section 11001 of subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that subtitle A may be cited as the "District of Columbia Retirement Protection Act of 1997."

§ 1-761.2. Definitions.

For purposes of this chapter, the following definitions shall apply:

(1) The term “contract” means the contract under § 1-764.5 between the Secretary and the Trustee, and includes any agreement with a department, agency, or instrumentality of the United States entered into under that section.

(2) The term “covered District employee” means a teacher of the District of Columbia public schools, or a member of the Metropolitan Police Force or the Fire Department of the District of Columbia, as defined under the District Retirement Program.

(3) The term “District Government” means any entity treated as part of the District government under § 47-393(5), including the District of Columbia Retirement Board (as defined in § 1-702(5)).

(4) The term “District Retirement Fund” means the District of Columbia Police Officers and Fire Fighters Retirement Fund and the District of Columbia Teachers Retirement Fund, as defined in the Reform Act.

(5) The term “District Retirement Program” means any of the retirement programs for teachers and members of the Metropolitan Police Force and Fire Department, as described in § 1-702(7) as in effect on the day before the freeze date (except as amended by § 11013 of the District of Columbia Retirement Protection Act of 1997).

(6) The term “enrolled actuary” means the enrolled actuary engaged by the Trustee under § 1-767.1(a).

(7) The term “Federal benefit payment” means a payment described in § 1-762.2.

(8) The term “Federal Supplemental Fund” means the Federal Supplemental District of Columbia Pension Fund created under § 1-766.1.

(9) The term “freeze date” means June 30, 1997.

(10) The term “person” means an individual; partnership; joint venture; corporation; mutual company; joint-stock company; trust; estate; unincorporated organization; association; employee organization; or department, agency, or instrumentality of the United States.

(11) The term “Reform Act” means the District of Columbia Retirement Reform Act (Public Law 96-122).

(12) The term “replacement plan” means the plan described in § 1-765.2.

(13) The term “replacement plan adoption date” means the date upon which the legislation establishing the replacement plan becomes effective, or the first day after the expiration of the 1-year period which begins on the date of the enactment of this Act, whichever occurs first.

(14) The term “Trust Fund” means the District of Columbia Federal Pension Liability Trust Fund established under § 1-764.1.

(15) The term “Secretary” means the Secretary of the Treasury or the Secretary’s designee.

(16) The term “Trustee” means the person or persons selected by the Secretary under § 1-764.5. (Aug. 5, 1997, 111 Stat. 716, Pub. L. 105-33, § 11003; Oct. 21, 1998, 112 Stat. 2681-530, Pub. L. 105-277, § 801(a).)

Effect of amendments. — Public Law 105-277, in (1), added “and includes any agreement with a department, agency, or instrumentality of the United States entered into under that section”; and, in (10), substituted “association; employee organization; or department, agency, or instrumentality of the United States” for “association, or employee organization,” and made minor punctuation changes.

References in text. — Section 305(5) of the District of Columbia Financial Responsibility

and Management Assistance Act of 1995, referred to in (3), is § 305(5) of Pub. L. 104-8, 109 Stat. 152, which is codified as § 47-393(5).

Section 11013 of the District of Columbia Retirement Protection Act of 1997, referred to in (5), is § 11013 of subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 718.

“This Act,” referred to in (13), is the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

Subchapter II. Federal Benefit Payments Under District Retirement Programs.

§ 1-762.1. Obligation of federal government to make benefit payments.

(a) *In general.* — In accordance with the provisions of this chapter, the federal government shall make federal benefit payments associated with the pension plans for police officers, firefighters, and teachers of the District of Columbia.

(b) *No reversion of federal responsibility to District.* — At no point after the effective date of this chapter may the responsibility or any part thereof assigned to the federal government under subsection (a) of this section for making federal benefit payments revert to the District of Columbia. (Aug. 5, 1997, 111 Stat. 717, Pub. L. 105-33, § 11011.)

Reference to New Federal Program for Retirement of Judges of D.C. Courts. — See § 11085 of Title XI of Pub. L. 105-33, 111 Stat. 730,

§ 1-762.2. Federal benefit payments described.

(a) *In general.* — Subject to the succeeding provisions of this chapter, a “Federal benefit payment” is any benefit payment to which an individual is entitled under a District Retirement Program, in such amount and under such terms and conditions as may apply under such Program.

(b) *Treatment of service occurring after freeze date.* — Service after the freeze date shall not be credited for purposes of determining the amount of any Federal benefit payment. Nothing in this subsection shall be construed to affect the crediting of such service for any other purpose under the District Retirement Program.

(c) *Special rule regarding disability benefits.* — To the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement Program is based on a determination of disability made by the District government or the Trustee after the freeze date, the Federal benefit payment determined with respect to the individual shall be an amount equal to the deferred retirement benefit or normal retirement benefit the individual would receive if the individual left service on the day before the commencement of disability retirement benefits.

(d) *Special rule regarding certain death benefits.* —

(1) *In general.* — In the case of a benefit payment to which an individual is entitled under a District Retirement Program which is payable on the death of a covered District employee or former covered District employee and which is not determined by the length of service of the employee or former employee, the Federal benefit payment determined with respect to the individual shall be equal to the pre-freeze date percentage of the amount otherwise payable.

(2) *Pre-freeze date percentage defined.* — In paragraph (1) of this subsection, the “pre-freeze date percentage” with respect to a covered District employee or former covered District employee is the amount (expressed as a percentage) equal to the quotient of:

(A) The number of months of the covered District employee’s or former covered District employee’s service prior to the freeze date; divided by

(B) The total number of months of the covered District employee’s or former covered District employee’s service. (Aug. 5, 1997, 111 Stat. 718, Pub. L. 105-033, § 11012; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(g)(1).)

Effect of amendments. — Public Law 105-277 substituted “District government” for “District of Columbia Retirement Board” in (c).

Subchapter III. Determinations and Review of Eligibility and Payments; Information Sharing.

§ 1-763.1. Determination of eligibility for and amount of Federal benefit payments made by Trustee.

Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Trustee:

(1) Shall determine whether an individual is eligible to receive a Federal benefit payment under this chapter;

(2) Shall determine the amount and form of an individual’s Federal benefit payment under this chapter; and

(3) May recoup or recover, or waive recoupment or recovery of, any amounts paid under this chapter as a result of errors or omissions by the Trustee, the District Government, or any other person. (Aug. 5, 1997, 111 Stat. 720, Pub. L. 105-33, § 11021; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(b).)

Effect of amendments. — Public Law 105-277 inserted “or waive recoupment or recovery of” in (3).

§ 1-763.2. Procedures for resolving claims arising from denied benefit payments.

(a) *Requiring notice and opportunity for review.* — In accordance with procedures approved by the Secretary, the Trustee shall provide to any

individual whose claim for a Federal benefit payment under this chapter has been denied in whole or in part:

(1) Adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the District Retirement Program; and

(2) A reasonable opportunity for a full and fair review of the decision denying such claim.

(b) *Standard for review.* — Any factual determination made by the Trustee shall be presumed correct unless rebutted by clear and convincing evidence. The Trustee's interpretation and construction of the benefit provisions of the District Retirement Program and this chapter shall be entitled to great deference. (Aug. 5, 1997, 111 Stat. 720, Pub. L. 105-33, § 11022.)

§ 1-763.3. Transfer of and access to records of District Government.

(a) *In general.* — Within 30 days after the Secretary or the Trustee requests, the District Government shall furnish copies of all records, documents, information, or data the Secretary or the Trustee deems necessary to carry out responsibilities under this chapter and the contract. Upon request, the District Government shall grant the Secretary or the Trustee direct access to such information systems, records, documents, information or data as the Secretary or Trustee requires to carry out responsibilities under this chapter or the contract.

(b) *Repayment by District Government.* — The District Government shall reimburse the Trust Fund for all costs, including benefit costs, that are attributable to errors or omissions in the transferred records that are identified within 3 years after such records are transferred. (Aug. 5, 1997, 111 Stat. 721, Pub. L. 105-33, § 11023.)

§ 1-763.4. Federal information sharing for verification of benefit determinations.

(a) *In general.* — Except with respect to taxpayer returns and return information subject to § 6103 of the Internal Revenue Code of 1986, the Secretary may:

(1) Secure directly from any department or agency of the United States information necessary to enable the Secretary to verify or confirm benefit determinations under this chapter; and

(2) By regulation authorize the Trustee to review such information for purposes of administering this chapter and the contract.

(b) Omitted.

(c) *Confidentiality.* — The Secretary may issue regulations governing the confidentiality of the information obtained pursuant to subsection (a) of this section and the provisions of law amended by § 11024(b) of the District of Columbia Retirement Protection Act of 1997. (Aug. 5, 1997, 111 Stat. 721, Pub. L. 105-33, § 11024.)

References in text. — Section 6103 of the Internal Revenue Code of 1986, referred to in the introductory paragraph of (a), is 26 U.S.C. § 6103.

Section 11024(b) of the District of Columbia Retirement Protection Act of 1997, referred to in (c), is § 11024(b) of subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715.

Amendments to Internal Revenue Code.

— For amendments to the Internal Revenue Code related to District of Columbia Retirement Programs, see § 11024(b) of Title XI of Pub. L. 105-33, 111 Stat. 721, the National Capital Revitalization and Self-Government Improvement Act of 1997.

Subchapter IV. District of Columbia Federal Pension Liability Trust Fund.

§ 1-764.1. Creation of Trust Fund.

(a) *Establishment.* — There is established on the books of the Treasury the District of Columbia Federal Pension Liability Trust Fund, consisting of the assets transferred pursuant to § 1-764.3 and any income earned on the investment of such assets pursuant to subsection (b) of this section.

(b) *Investment of assets.* — The Trustee may invest the assets of the Trust Fund in private securities and any other form of investment deemed appropriate by the Secretary. (Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11031.)

Payment of attorney fees. — Section 130 of Pub. L. 105-277, 112 Stat. 2681-138, provides that “none of the funds contained in this Act may be made available to pay the fees of an attorney who represents a party who prevails in an action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) if: (1) the hourly rate of compensation of

the attorney exceeds the hourly rate of compensation under § 11-2604(a), or (2) the maximum amount of compensation of the attorney exceeds the maximum amount of compensation under § 11-2604(b)(1), except that compensation and reimbursement in excess of such maximum may be approved for extended or complex representation in accordance with § 11-2604(c).”

§ 1-764.2. Uses of amounts in Trust Fund.

(a) *In general.* — Amounts in the Trust Fund shall be used:

- (1) To make Federal benefit payments under this chapter;
- (2) Subject to subsection (b)(1) of this section, to cover the reasonable and necessary expenses of administering the Trust Fund under the contract entered into pursuant to § 1-764.5(b);
- (3) To cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary’s responsibilities under this chapter; and
- (4) For such other purposes as are specified in this chapter.

(b) *Special rules regarding administrative expenses.* —

(1) *Budgeting; certification and approval.* — The administrative expenses of the Trust Fund shall be paid in accordance with an annual budget set forth by the Trustee which shall be subject to certification and approval by the Secretary.

(2) *Use of District Retirement Fund for interim administration.* — The Secretary is authorized to requisition from the District Retirement Fund such sums as are necessary to administer the Trust Fund (including expenses

described in § 1-765.1(b)) until assets are transferred to the Trust Fund pursuant to § 1-764.3. (Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11032; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(c).)

Effect of amendments. — Public Law 105-277, in (a)(2), substituted “(b)(1)” for “(b),” and deleted “and” from the end; redesignated former (a)(3) as (a)(4) and inserted present (a)(3); and inserted “(including expenses described in § 1-765.1(b))” in (b)(2).

§ 1-764.3. Transfer of assets and obligations of District Retirement Funds.

(a) *In general.* — As of the replacement plan adoption date, all obligations to make Federal benefit payments and all assets of the District Retirement Fund as of the replacement plan adoption date (except as provided in subsections (b) and (c) of this section) shall be transferred to the Trust Fund.

(b) *Designation of assets to be retained by District Retirement Fund.* — The Secretary shall designate assets with a value of \$1.275 billion that shall not be transferred from the District Retirement Fund under subsection (a) of this section. The Secretary’s designation and valuation of the assets shall be final and binding.

(c) *Exception for certain employee contributions.* —

(1) *In general.* — Subsection (a) of this section shall not apply to assets of the District Retirement Fund consisting of any employee contributions deducted and withheld after the freeze date or any interest thereon (computed at a rate and in a manner determined by the Secretary).

(2) *Employee contributions defined.* — In paragraph (1) of this subsection, the term “employee contributions” means amounts deducted and withheld from the salaries of covered District employees and paid to the District Retirement Fund (and, in the case of teachers, amounts of additional deposits paid to the District Retirement Fund), pursuant to the District Retirement Program.

(d) *Responsibilities of District government.* —

(1) *In general.* — The transfer of assets from the District Retirement Fund under this section shall be made in accordance with the direction of the Secretary. The District Government shall promptly take all steps, and execute all documents, that the Secretary deems necessary to effect the transfer.

(2) *Final reconciliation of accounts.* — As soon as practicable after the replacement plan adoption date, the District government shall furnish the Trustee a final reconciliation of accounts in connection with the transfer of assets and obligations to the Trust Fund. The allocation of assets under this section shall be adjusted in accordance with this reconciliation.

(e) *Methodology for designating assets.* —

(1) *In general.* — In carrying out subsection (b), the Secretary may develop and implement a methodology for designating assets after the replacement plan adoption date that takes into account the value of the District Retirement Fund as of the replacement plan adoption date and the proportion of such value represented by \$1.275 billion, together with the income (including returns on investments) earned on the assets of and withdrawals from and

deposits to the Fund during the period between such date and the date on which the Secretary designates assets under subsection (b). In implementing a methodology under the previous sentence, the Secretary shall not be required to determine the value of designated assets as of the replacement plan adoption date. Nothing in this paragraph may be deemed to effect the entitlement of the District Retirement Fund to income (including returns on investments) earned after the replacement plan adoption date on assets designated for retention by the Fund.

(2) *Employee contributions; Judicial Retirement and Survivors Annuity Fund.* — The Secretary may develop and implement a methodology comparable to the methodology described in paragraph (1) in carrying out the requirements of subsection (c) and in designating assets to be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund pursuant to § 1-714(c)(1).

(3) *Discretion of the Secretary.* — The Secretary's development and implementation of methodologies for designating assets under this subsection shall be final and binding. (Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11033; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, §§ 801(g)(2), 803.)

Effect of amendments. — Public Law 105-277 deleted "consisting" following "assets" in (c)(1); and added (e).

§ 1-764.4. Treatment of Trust Fund under certain laws.

(a) *Internal Revenue Code.* — For purposes of the Internal Revenue Code of 1986:

(1) The Trust Fund shall be treated as a trust described in § 401(a) of the Code which is exempt from taxation under § 501(a) of the Code;

(2) Any transfer to or distribution from the Trust Fund shall be treated in the same manner as a transfer to or distribution from a trust described in § 401(a) of the Code; and

(3) The benefits provided by the Trust Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(b) *ERISA.* — For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Trust Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(c) *Application of certain future amendments to Internal Revenue Code.* — To the extent that any provision of subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) is amended after the date of the enactment of this Act, such provision as amended shall apply to the Trust Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this chapter. (Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11034.)

References in text. — Sections 401 and 501 of the Internal Revenue Code, referred to in (a), are codified as 26 U.S.C. §§ 401 and 501, respectively.

The "Employee Retirement Income Security Act of 1974," referred to in (b), is codified as 29 U.S.C. § 1001 et seq.

§ 1-764.5. Administration through Trustee.

(a) *In general.* — As soon as practicable after the enactment of this chapter, the Secretary shall select a Trustee to administer the Trust Fund and otherwise carry out the responsibilities and duties specified in this chapter in accordance with the contract described in subsection (b) of this section.

(b) *Contract.* — The Secretary shall enter into a contract with the Trustee to provide for the management, investment, control and auditing of Trust Fund assets, the making of Federal benefit payments under this chapter from the Trust Fund, and such other matters as the Secretary deems appropriate. The Secretary shall enforce the provisions of the contract and otherwise monitor the administration of the Trust Fund.

(c) *Subcontracts.* — Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Trustee may, with the approval of the Secretary, enter into one or more subcontracts with the District government or any person to provide services to the Trustee in connection with its performance of the contract. The Trustee shall monitor the performance of any such subcontract and enforce its provisions.

(d) *Determination by the Secretary.* — Notwithstanding subsection (b) or any other provision of this chapter, the Secretary may determine, with respect to any function otherwise to be performed by the Trustee, that in the interest of economy and efficiency such function shall be performed by the Secretary rather than the Trustee.

(e) *Reports.* — The Trustee shall report to the Secretary, in a form and manner and at such intervals as the Secretary may prescribe, on any matters or transactions relating to the Trust Fund, including financial matters, as the Secretary may require. (Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11035; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(d).)

Effect of amendments. — Public Law 105-277 redesignated former (c) as (e) and added present (c) and (d).

Subchapter V. Responsibilities of District Government.**§ 1-765.1. Interim administration.**

(a) *Administration of benefits until appointment of trustee.* — Notwithstanding subchapter II of this chapter, after the enactment of this chapter the District Government shall continue to discharge its duties and responsibilities under the District Retirement Program and the District Retirement Fund (as such duties and responsibilities are modified by this chapter), including the responsibility for Federal benefit payments, until such time as the Secretary notifies the District Government that the Secretary has directed the Trustee to carry out the duties and responsibilities required under the contract.

(b) *Reimbursement from Trust Fund.* — The Secretary or the Trustee shall, at such times during or after the period of interim administration described in subsection (a) of this section as are deemed appropriate by the Secretary or the Trustee, reimburse the District Government for any administrative expenses

incurred by the District Government in carrying out subsection (a) of this section:

(1) If the Secretary or the Trustee finds such expenses to be reasonable and necessary; and

(2) To the extent that the District Government is not reimbursed for such expenses from other sources.

(c) *Making District Retirement Fund whole.* — The District Government shall reimburse the District Retirement Fund for any benefits paid inconsistent with this chapter from the District Retirement Fund between the freeze date and such time as the Secretary notifies the District government that the Secretary has directed the Trustee to carry out the duties and responsibilities required under the contract. (Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11041; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(e).)

Effect of amendments. — Public Law 105-277 substituted “The Secretary or the Trustee shall, at such times during or after the period of interim administration described in subsection (a) as are deemed appropriate by the Secretary or the Trustee” for “The Trustee shall” in (b); inserted “the Secretary or” after “If” in (b)(1);

and substituted “such time as the Secretary notifies the District government that the Secretary has directed the Trustee to carry out the duties and responsibilities required under the contract” for “the replacement plan adoption date” in (c).

§ 1-765.2. Replacement plan.

(a) *Adoption by District government.* — Not later than one year after the date of the enactment of this chapter, the District government shall adopt a replacement plan for pension benefits for covered District employees, effective as of the freeze date.

(b) *Replacement plan imposed if District government fails to adopt plan.* — If the District government fails to adopt a replacement plan within the period prescribed in subsection (a) of this section, the retirement program applicable to police, firefighters, and teachers under the laws of the District of Columbia in effect as of June 1, 1997 (except as otherwise amended by this act), including all requirements of the program regarding benefits, contributions, and cost-of-living adjustments, shall be treated as the replacement plan for purposes of this chapter.

(c) *No payment of amounts paid as Federal benefit payment.* — Notwithstanding any provision of the Reform Act or any other law, rule, or regulation, the District government is not required to pay any amount under any replacement plan under this chapter if the amount is paid as a Federal benefit payment under this chapter. (Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11042.)

References in text. — “This act,” referred to in (b), is the the National Capital Revitalization

and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

Subchapter VI. Financing of Benefit Payments After Depletion of Trust Fund.

§ 1-766.1. Creation of Federal Supplemental Fund.

(a) *Establishment.* — There is established on the books of the Treasury the Federal Supplemental District of Columbia Pension Fund, which shall be administered by the Secretary and shall consist of the following assets:

(1) Amounts deposited into such Fund under the provisions of this chapter.

(2) Any amount otherwise appropriated to such Fund.

(3) Any income earned on the investment of the assets of such Fund pursuant to subsection (b) of this section.

(b) *Investment of assets.* — The Secretary shall invest such portion of the Federal Supplemental Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Federal Supplemental Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(c) *Recordkeeping for actuarial status.* — The Secretary shall provide for the keeping of such records as are necessary for determining the actuarial status of the Federal Supplemental Fund. (Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11051.)

§ 1-766.2. Uses of amounts in Fund.

Amounts in the Federal Supplemental Fund shall be used for the accumulation of funds in order to finance obligations of the Federal government for benefits and necessary administrative expenses under the provisions of this chapter, in accordance with the methodology selected by the Secretary under § 1-766.4(b), except that payments from the Fund for administrative expenses may be made only to the extent and in such amounts as are provided in advance in appropriations acts. (Aug. 5, 1997, 111 Stat. 726, Pub. L. 105-33, § 11052; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 801(g)(3).)

Effect of amendments. — Public Law 105-277 inserted “to” following “may be made only.”

§ 1-766.3. Determination of annual payment into Federal Supplemental Fund.

(a) *Annual amortization amount.* — At the end of each applicable fiscal year the Secretary shall promptly pay into the Federal Supplemental Fund from the General Fund of the Treasury an amount equal to the annual amortization amount for the year (which may not be less than zero).

(b) *Administrative expenses.* — During each applicable fiscal year, the Secretary shall pay into the Federal Supplemental Fund from the General Fund of the Treasury amounts not to exceed the covered administrative expenses for the year.

(c) *Determination of amounts.* — For purposes of this section:

(1) The “original unfunded liability” is the amount that is the present value as of October 21, 1998 of future benefits payable from the Federal Supplemental Fund.

(2) The “annual amortization amount” is the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized):

(A) The original unfunded liability over a 30-year period;

(B) A net experience gain or loss over a 10-year period; and

(C) Any other changes in actuarial liability over a 20-year period.

(3) The “covered administrative expenses” are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Federal Supplemental Fund.

(d) *Timing.* — The first applicable fiscal year under subsection (a) of this section is the first fiscal year that ends more than six months after the replacement plan adoption date. (Aug. 5, 1997, 111 Stat. 726, Pub. L. 105-33, § 11053; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 801(f).)

Effect of amendments. — Public Law 105-277 rewrote (a); redesignated former (b) and (c) as (c) and (d) and added present (b); and substituted “October 21, 1998” for “freeze date” in (c)(1).

§ 1-766.4. Determination of methodology for making payments.

(a) *Notice to President and Congress.* — Not later than 18 months before the time that assets remaining in the Trust Fund are projected to be insufficient for making Federal benefit payments and covering necessary administrative expenses when due, the Secretary shall so advise the President and the Congress.

(b) *Selection of methodology.* — Before all available assets of the Trust Fund have been depleted, the Secretary shall determine whether Federal benefit payments and necessary administrative expenses under this chapter shall be made by one of the following methods:

(1) Continuation of the Trust Fund using payments from the Federal Supplemental Fund.

(2) Discontinuation of the Trust Fund, with payments made:

(A) By direct payment by the Secretary from the Federal Supplemental Fund; or

(B) From the Federal Supplemental Fund through another department or agency of the United States.

(c) *Arrangements by Secretary.* — The Secretary shall make appropriate arrangements to implement the determinations made in this section. (Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-033, § 11054; Apr. 20, 1999, D.C. Law 12-264, § 6(a), 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-264 validated a previously made technical correction in (c).

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 1-766.5. Special requirements upon discontinuation of Trust Fund.

(a) *Successor to Trustee.* — If the Secretary determines that the Trust Fund shall be discontinued after it has been depleted of assets, the Secretary shall appoint a successor to the Trustee to administer the requirements of this chapter, with the same powers and subject to the same conditions as were applicable to the Trustee.

(b) *Continuing application of terms and conditions.* — The methodology selected by the Secretary under § 1-766.4(b), and the payment of benefits pursuant to such methodology, shall be subject to the same arrangements, terms, and conditions as were applicable under this chapter to the Trust Fund and the benefits paid under the Trust Fund (including provisions relating to the treatment of the Trust Fund under certain laws). (Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-33, § 11055.)

Subchapter VII. Reports.

§ 1-767.1. Annual valuations and reports by enrolled actuary.

(a) *Determination of actuarial valuations.* — The Trustee shall engage an enrolled actuary (as defined in § 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries to perform an annual actuarial valuation (in a manner and form determined by the Secretary) of the Trust Fund and the Federal Supplemental Fund for obligations assumed by the Federal Government under this chapter.

(b) *Annual report on status of funds.* — The enrolled actuary shall prepare and submit to the Secretary and the Trustee an annual report on the actuarial status of the Trust Fund and the Federal Supplemental Fund, and shall include in the report:

(1) A projection of when assets in the Trust Fund will be insufficient to pay benefits and necessary administrative expenses when due; and

(2) A determination of the annual payment to the Federal Supplemental Fund under § 1-766.3. (Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-33, § 11061; Apr. 20, 1999, D.C. Law 12-264, § 6(b), 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-264, in (a), substituted “to perform” for “to shall perform” following “American Academy of Actuaries.”

Legislative history of Law 12-264. — See note to § 1-766.4.

References in text. — “Section 7701(a)(35) of the Internal Revenue Code of 1986,” referred to in (a), is codified as 26 U.S.C. § 7701(a)(35).

§ 1-767.2. Reports by Comptroller General.

(a) *In general.* — The Comptroller General is authorized to conduct evaluations of the administration of this chapter to ensure that the Trust Fund and Federal Supplemental Fund are being properly administered and shall report the findings of such evaluations to the Secretary and the Congress.

(b) *Access to information.* — For the purpose of evaluations under subsection (a) of this section the Comptroller General, subject to § 6103 of the Internal Revenue Code of 1986, shall have access to and the right to copy any books, accounts, records, correspondence or other pertinent documents that are in the possession of the Secretary or the Trustee, or any contractor or subcontractor of the Secretary or the Trustee. (Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11062.)

References in text. — “Section 6103 of the Internal Revenue Code of 1986,” referred to in (b), is codified as 26 U.S.C. § 6103.

Subchapter VIII. Judicial Enforcement.

§ 1-768.1. Judicial review.

(a) *In general.* — A civil action may be brought:

(1) By a participant or beneficiary to enforce or clarify rights to benefits from the Trust Fund or Federal Supplemental Fund under this chapter;

(2) By the Trustee:

(A) To enforce any claim arising (in whole or in part) under this chapter or the contract; or

(B) To recover benefits improperly paid from the Trust Fund or Federal Supplemental Fund or to clarify a participant's or beneficiary's rights to benefits from the Trust Fund or Federal Supplemental Fund; and

(3) By the Secretary to enforce any provision of this chapter or the contract.

(b) *Treatment of Trust Fund.* — The Trust Fund may sue and be sued as an entity.

(c) *Exclusive remedy.* — This subchapter shall be the exclusive means for bringing actions against the Trust Fund, the Trustee, or the Secretary under this chapter. (Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11071.)

§ 1-768.2. Jurisdiction and venue.

(a) *In general.* — The United States District Court for the District of Columbia shall have exclusive jurisdiction and venue, regardless of the amount in controversy, of:

(1) Civil actions brought by participants or beneficiaries pursuant to this chapter, and

(2) Any other action otherwise arising (in whole or part) under this chapter or the contract.

(b) *Review by Court of Appeals.* — Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia

issued pursuant to an action described in subsection (a) of this section that concerns the validity or enforceability of any provision of this chapter or seeks injunctive relief against the Secretary or Trustee under this chapter shall be reviewable only pursuant to a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.

(c) *Review by Supreme Court.* — Notwithstanding any other provision of law, review by the Supreme Court of the United States of a decision of the Court of Appeals that is issued pursuant to subsection (b) of this section may be had only if the petition for relief is filed within 20 calendar days after the entry of such decision.

(d) *Restrictions on declaratory or injunctive relief.* — No order of any court granting declaratory or injunctive relief against the Secretary or the Trustee shall take effect during the pendency of the action before such court, during the time an appeal may be taken, or (if an appeal is taken or petition for certiorari filed) during the period before the court has entered its final order disposing of the action. (Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11072.)

§ 1-768.3. Statute of limitations.

(a) *Action for benefits.* — Any civil action by an individual with respect to a Federal benefit payment under this chapter shall be commenced within 180 days of a final benefit determination.

(b) *Action for breach of contract or other violations.* — Except as provided in subsection (c) of this section, any civil action for breach of the contract or any other violation of this chapter shall be commenced within the later of:

(1) Six years after the last act that constituted the alleged breach or violation or, in the case of an omission, six years after the last date on which the alleged breach or violation could have been cured; or

(2) Three years after the earliest date on which the plaintiff knew or could have reasonably been expected to have known of the act or omission on which the action is based.

(c) *Special rule for actions against Secretary.* — Notwithstanding subsection (b) of this section, any action against the Secretary arising (in whole or part) under this chapter or the contract shall be commenced within one year of the events giving rise to the cause of action. (Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-033, § 11073.)

§ 1-768.4. Treatment of misappropriation of fund amounts as Federal crime.

The provisions of § 664 of Title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Trust Fund and the Federal Supplemental Fund. (Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11074.)

*Subchapter IX. Miscellaneous.***§ 1-769.1. Coordination between Secretary, Trustee, and District Government.**

The Secretary, Trustee, and District Government shall carry out responsibilities under this chapter and under the contract in a manner which promotes the cost-effective and efficient administration of benefit payments under the District Retirement Programs, and in a manner which avoids unnecessary interruptions and delays in paying individuals the full benefits to which they are entitled under such Programs. (Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11081.)

§ 1-769.2. Study of alternatives for financing Federal obligations.

(a) *In general.* — As soon as practicable after the date of the enactment of this chapter, the Secretary shall enter into a contract with an independent consultant to conduct a study of actuarial alternatives for financing the federal obligations assumed under this chapter, together with an analysis of the impact of each alternative on the federal budget. The Secretary and the District Government shall cooperate with the consultant and shall provide direct access to such information systems, records, documents, information, or data as will enable the consultant to conduct the study.

(b) *Deadline.* — The contract entered into under subsection (a) of this section shall require the consultant to report the results of the study not later than 12 months after the date of enactment of this act.

(c) *No effect on Federal obligations.* — Nothing in this section may be construed to affect any obligation of the Federal government to make payments under this chapter. (Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11082.)

References in text. — “This act,” referred to in (b), is the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

“The effective date of this chapter” and “the effective date of this Act,” referred to in this section, is the later of October 1, 1997, or the

day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District of Columbia government for fiscal year 1998 meet the requirements of § 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

§ 1-769.3. Issuance of regulations by Secretary.

The Secretary is authorized to issue regulations to implement, interpret, administer and carry out the purposes of this chapter, and, in the Secretary's discretion, those regulations may have retroactive effect. (Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11083.)

§ 1-769.4. Effect on Reform Act and other laws.

(a) *Reform Act.* — This chapter supersedes any provision of the Reform Act inconsistent with this chapter and the regulations thereunder.

(b) *No effect on tax treatment of benefits.* — Except as otherwise specifically provided, nothing in this chapter may be construed to affect the application of any provision of the Internal Revenue Code of 1986 to any annuity or other benefit provided to or on behalf of any individual, including any disability benefit or any portion of a retirement benefit attributable to an individual's disability status.

(c) *No effect on benefits for park police and secret service.* — Nothing in this chapter shall be deemed to alter or amend in any way the provisions of existing law (including the Reform Act) relating to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division. (Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11084(a)(1), (b), (c).)

References in text. — The “Internal Revenue Code of 1986,” referred to in (b), is codified as Title 26 of the United States Code.

§ 1-769.5.

Reserved.

(Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-033, § 11085.)

§ 1-769.6. Full faith and credit.

Federal obligations for benefits under this chapter are backed by the full faith and credit of the United States. (Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11086.)

§ 1-769.7. Severability of provisions.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11087.)

*Subchapter IX-A. Applicability.***§ 1-769.21. Transition from District of Columbia administration.**

Sections 1-763.3, 1-764.2(b)(2), 1-764.3(d), and 1-765.1 shall apply to the administration of the District of Columbia Judges Retirement Fund estab-

lished under § 1-714, the District of Columbia Judicial Retirement and Survivors Annuity Fund established under § 11-1570, and the retirement program for judges under subchapter III of Chapter 15 of Title 11, except as follows:

(1) In applying each such section:

(A) Any reference to this chapter shall instead refer to subchapter III of Chapter 15 of Title 11;

(B) Any reference to the District Retirement Program shall be deemed to include the retirement program for judges under subchapter III of Chapter 15 of Title 11;

(C) Any reference to the District Retirement Fund shall be deemed to include the District of Columbia Judges Retirement Fund established under § 1-714;

(D) Any reference to Federal benefit payments shall be deemed to include judges retirement pay, annuities, refunds, and allowances under subchapter III of Chapter 15 of Title 11;

(E) Any reference to the Trust Fund shall instead refer to the District of Columbia Judicial Retirement and Survivors Annuity Fund established under § 11-1570;

(F) Any reference to § 1-764.3 shall instead refer to § 1-714; and

(G) Any reference to subchapter II shall instead refer to § 11-1570.

(2) In applying § 1-763.3:

(A) Any reference to the contract shall instead refer to the agreement referred to in § 11-1570(b); and

(B) Any reference to the Trustee shall instead refer to the Trustee or contractor referred to in § 11-1570(b).

(3) In applying § 1-764.3(d):

(A) Any reference to this section shall instead refer to § 1-714; and

(B) Any reference to the Trustee shall instead refer to the Secretary or the Trustee or contractor referred to in § 11-1570(b).

(4) In applying § 1-765.1(b), any reference to the Trustee shall instead refer to the Trustee or contractor referred to in § 11-1570(b). (Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(d)(2); Oct. 21, 1998, 112 Stat. 2861-536, Pub. L. 105-277, § 804(d)(2).)

Effect of amendments. — Public Laws 105-274 and 105-277 added this section.

Effective date of § 11252(c) of Pub. L. 105-33. — Section 2(d)(3) of Pub. L. 105-274 and § 804(d)(3) of Pub. L. 105-277 provide that § 11252(c) of Pub. L. 105-33, as amended by §§ 2(d)(1) and (e)(3) of Pub. L. 105-274 and

§§ 804(d)(1) and (e)(3) of Pub. L. 105-277, shall take effect on the date on which the assets of the District of Columbia Judges Retirement Fund are transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund.

CHAPTER 7B. POLICE OFFICERS, FIRE FIGHTERS, AND TEACHERS RETIREMENT BENEFIT REPLACEMENT PLAN.

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Subchapter I. Findings and Definitions.

§ 1-781.1. Findings and purpose.

(a) The Council of the District of Columbia finds the following:

(1) When the federal government established separate retirement funds for police officers, fire fighters, and teachers, and established a retirement board with responsibility for managing these retirement funds, it significantly unfunded the liabilities of the retirement funds in an amount totaling approximately \$2,600,000,000.

(2) The approximate \$2,600,000,000 unfunded liability has increased to nearly \$4,800,000,000 due primarily to the accumulation of interest on the initial balance, not because of any action taken or any failure to act on the part of the District government or the District of Columbia Retirement Board.

(3) Because the unfunded liability is a legal obligation of the District government and exceeds the total General Obligation debt of the District, the presence of the unfunded pension liability has had a significant negative impact on the District's credit rating.

(4) The costs associated with the liability have been a contributing cause to the District's ongoing financial crisis.

(5) Pursuant to the Retirement Protection Act, the federal government will relieve the District government of the responsibility for the unfunded pension liabilities transferred to the District in 1979, and will assume the legal responsibility for payment of retirement benefits accrued by police officers, fire fighters, and teachers prior to July 1, 1997.

(6) The Retirement Protection Act requires the establishment by the District government of a replacement plan for the current pension benefits for police officers, fire fighters, and teachers.

(b) It is the purpose of this chapter to accomplish the following:

(1) Establishment of replacement retirement plans for pension benefits accrued after June 30, 1997, for police officers, fire fighters, and teachers; and

(2) Provision for full funding and management on an actuarially sound basis of all retirement funds entrusted to the District government for the benefit of teachers, members and officers of the Metropolitan Police Department, and employees of the Fire and Emergency Medical Services Department. (Sept. 18, 1998, D.C. Law 12-152, § 101, 45 DCR 4045.)

Cross references. — As to the definition of “Retirement Protection Act,” referred to throughout this section, see § 1-781.2(17).

Legislative history of Law 12-152. — Law 12-152, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998,” was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

References in text. — The “Retirement Protection Act,” referred to in (a)(5) and (6), is subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715.

Application of Law 12-152. — Section 209 of D.C. Law 12-152 provided that the act shall apply as of October 1, 1997.

Management and Financing of Retirement Benefits. — Title I of D.C. Law 12-152, pertaining to the management and financing of police officers, fire fighters, and teachers retirement benefits, is codified in this chapter as §§ 1-781.1 through 1-785.9.

§ 1-781.2. Definitions.

For the purposes of this chapter, the term:

(1) “Covered District employee” or “participant” means a teacher of the District of Columbia public schools, a member of the Metropolitan Police Department, or a member of the Fire and Emergency Medical Services Department. It does not include an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service, to whom the Police and Firemen’s Retirement Act applies.

(2) “Current value” means the fair market value, where available (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Retirement Board), or otherwise the fair value (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Retirement Board), assuming an orderly liquidation when so determined.

(3) “Employee contribution” means amounts deducted and withheld from the salaries of covered District employees and paid to the Funds (and in the

case of teachers, amounts of additional deposits paid to the Funds), pursuant to this chapter.

(4) "Employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which individuals covered by the Retirement Program participate and which exists for the purpose, in whole or in part, of dealing with the District government concerning the Retirement Program.

(5) "Enrolled actuary" means an actuary enrolled under subtitle C of Title III of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 1002; 29 U.S.C. § 3041 et seq.).

(6) "Federal Benefit Payment" means any benefit payment to which an individual is entitled under the Retirement Program, in an amount and under terms and conditions as may apply under the Retirement Program.

(7)(A) "Fiduciary" means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to the Funds:

(i) Exercises any discretionary authority or discretionary control respecting management of the Funds or exercises any discretionary authority or discretionary control respecting management or disposition of its assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Funds, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of the Funds.

(B) If any money or other property of the Funds is invested in securities issued by an investment company registered under Title I of An Act To provide for the registration and regulation of investment companies and investment advisers, and for other purposes, approved August 22, 1940 (54 Stat. 789; 15 U.S.C. § 80a-1 et seq.), that investment shall not by itself cause the investment company or the investment company's adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this section. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law.

(8) "Funds" means collectively the Police Officers and Fire Fighters' Retirement Fund, the Teachers' Retirement Fund, or the Judges' Retirement Fund, but only until the Judges' Retirement Fund is transferred pursuant to § 11252 of the Retirement Protection Act, approved August 5, 1997 (P.L. 105-33; 111 Stat. 758).

(9) "Judge" means a judge as defined in § 11-1561(1).

(10) "Judges' Retirement Fund" means the District of Columbia Judges' Retirement Fund, established under § 1-714(a).

(11) "Party in interest" means:

(A) Any person (including a member of the Retirement Board) having fiduciary responsibilities for the administration of assets in the Funds;

(B) Any person providing services to the Funds;

(C) The government of the District of Columbia;

(D) An employee organization; or

(E) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(12) “Police and Firemen’s Retirement Act” means the Policemen and Firemen’s Retirement and Disability Act amendments of 1957, § 4-607 et seq.

(13) “Police Officers and Fire Fighters’ Retirement Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund established under § 1-712(a).

(14) “Qualified public accountant” means a person who is a certified public accountant, certified by a regulatory authority of a state.

(15) “Retirement Board” means the District of Columbia Retirement Board established by § 1-711(a).

(16) “Retirement Program” means:

(A) The program of annuities and other retirement and disability benefits for members and officers of the Metropolitan Police Department and the Fire and Emergency Medical Services Department;

(B) The program of annuities and other retirement and disability benefits for judges of the courts of the District of Columbia under § 11-1561 et seq., but only until § 1-714 is terminated and transferred pursuant to § 11252 of the Retirement Protection Act, approved August 5, 1997 (P.L. 105-33; 111 Stat. 758); and

(C) The program of annuities and other retirement and disability benefits for teachers in the public day schools of the District of Columbia.

(17) “Retirement Protection Act” means the District of Columbia Retirement Protection Act of 1997, Subtitle A of Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 715) (“Retirement Protection Act”).

(18) “Retirement Reform Act” means the District of Columbia Retirement Reform Act, § 1-701 et seq. (“Retirement Reform Act”).

(19) “Security” means a security as defined in § 2(1) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. § 77b(1)).

(20) “State” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

(21) “Teacher” means a teacher as defined in § 31-1235.

(22) “Teachers’ Retirement Fund” means the District of Columbia Teachers’ Retirement Fund established under § 1-713.

(23) “Trust” means the \$1.275 billion in assets in the possession or control of the Retirement Board for post June 30, 1997, benefits and any contributions made to the Funds after June 30, 1997, for benefits accrued after June 30, 1997. (Sept. 18, 1998, D.C. Law 12-152, § 102, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

References in text. — Section 11252 of the Retirement Protection Act, referred to in (8)

and (16)(B), is codified at §§ 1-711, 1-714, and 1-769.21.

Application of Law 12-152. — See note to § 1-781.1

*Subchapter II. Retirement Funds.***§ 1-782.1. Retirement fund for police officers and fire fighters.**

(a) The Police Officers and Fire Fighters' Retirement Fund shall continue in existence and shall be the fund into which the following deposits shall be made, which shall constitute the assets of the fund:

(1) Any employee contribution amount paid after June 30, 1997, to the Retirement Board pursuant to § 4-601 or § 4-610(e)(1) or § 4-612(a), respectively;

(2) Any amount appropriated by the District government for the fund in accordance with § 1-783.2;

(3) Any return on investment of the assets of the fund; and

(4) The amount derived from the \$1.275 billion of designated assets provided for pursuant to § 1-764.3.

(b) After the 30-day period following October 1, 1997, or after the end of the 30-day period beginning on the date on which funds are first appropriated to the Police Officers and Fire Fighters' Retirement Fund for Fiscal Year 1998, whichever is later, all payments of annuities and other retirement and disability benefits (including refunds and lump-sum payments) under the Police and Firemen's Retirement Act shall be made from the Fund (except for any such payment which is made to an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service, or to a beneficiary of any such officer or member). (Sept. 18, 1998, D.C. Law 12-152, § 111, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-782.2. Retirement fund for teachers.

(a) The Teachers' Retirement Fund shall continue in existence and shall be the fund into which the following deposits shall be made, which shall constitute the assets of the fund:

(1) Any employee contribution amount paid to the Retirement Board pursuant to subchapter II of Chapter 12 of Title 31, or pursuant to § 31-1251;

(2) Any asset transferred to the fund under subsection (b) of this section;

(3) Any amount appropriated by the District government for the fund in accordance with § 1-783.2; and

(4) Any return on investment of assets of the fund.

(b) After June 30, 1997, annuities and other retirement and disability benefits (including refunds and lump-sum payments) for the benefits of covered teachers shall become assets of the fund. (Sept. 18, 1998, D.C. Law 12-152, § 112, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-782.3. Management of the Funds.

(a) The Retirement Board shall be the custodian of the assets of the Funds and shall manage and invest the assets in accordance with the Retirement Reform Act and this chapter.

(b) The assets of the Funds shall be kept separate from other monies that may be under the control of the Retirement Board, but need not be kept separate from the assets of the separate funds comprising the Funds if the Retirement Board determines that commingling of those assets is advisable for investment purposes.

(c) The Retirement Board shall maintain, in an appropriate depository, a cash reserve for the Funds in an amount determined by the Retirement Board to be sufficient to meet current outlays for annuities and other retirement and disability benefits authorized to be paid from the Funds. (Sept. 18, 1998, D.C. Law 12-152, § 113, 45 DCR 4045.)

Legislative history of Law 12-152. — See November 17, 1979, 93 Stat. 866, Pub. L. 96-122.
note to § 1-781.1.

References in text. — The “Retirement Reform Act,” referred to in (a), is the Act of § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-782.4. Payments from retirement funds.

(a) The Mayor shall notify the Retirement Board of any payments for annuities or other retirement or disability benefits (including refunds and lump-sum payments) required to be made from the trust assets of the Police Officers and Fire Fighters’ Retirement Fund or the Teachers’ Retirement Fund. The Retirement Board shall make the payments from the appropriate fund.

(b) Once authorized pursuant to the appropriation process, the Retirement Board may make payments from the Funds sufficient to cover the cost of the management of the assets and the reasonable and necessary administrative expenses of the Retirement Board, including trustee and staff compensation, and liability insurance. (Sept. 18, 1998, D.C. Law 12-152, § 114, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-782.5. Interim federal benefit payments.

(a) Effective October 1, 1997, until the transfer of the assets required by the Retirement Protection Act is implemented, the Retirement Board shall make disbursements to the District government, or other entity as may be directed by the Secretary of the Treasury, from the trust assets of the Funds to make the Federal Benefit Payment obligation created pursuant to § 1-762.1 for benefits accrued by the covered District employees until June 30, 1997.

(b) No part of the employee contributions of the covered District employees after June 30, 1997, or the \$1.275 billion of designated assets provided for pursuant to § 1-764.3, may be used to make the Federal Benefit Payment obligation. (Sept. 18, 1998, D.C. Law 12-152, § 115, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

The “Retirement Protection Act,” referred to in (a), is subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715. —

§ 1-782.6. Annual audit.

(a) The examination performed by the independent qualified public accountant engaged pursuant to § 1-732(a)(3)(A) shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the Funds and the Retirement Program as are considered necessary by the accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules required by subsection (b) of this section and the summary material required under § 1-784.3 present fairly, in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report required pursuant to § 1-784.2. In offering his opinion, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if he so states his reliance.

(b)(1) The financial statement shall contain a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the retirement program, which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the Retirement Program, including any significant changes in the Retirement Program made during the period and the impact of the changes on benefits; the funding policy (including the policy with respect to prior service cost), and any changes in the policy during the year; a description of any significant changes in benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; and any other matters necessary to fully and fairly present the financial statements of the Funds.

(2) The statement required under paragraph (1) of this subsection shall have attached the following information in separate schedules:

(A) A statement of the assets and liabilities of the Funds, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year;

(B) A statement of receipts in and disbursements from the Funds during the preceding 12-month period, aggregated by general source and application;

(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether the party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) A schedule of each transaction involving a person known to be a party in interest, the identity of the party in interest and his relationship, or

that of any other party in interest, to the Funds, and a description of each asset to which the transaction relates; the purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan; expenses incurred in connection with the transaction; and the cost of the asset, the current value of the asset, and the net gain or loss on each transaction;

(E) A schedule of all loans or fixed income obligations that were in default as of the close of the fiscal year or were classified during the year as uncollectible and the following information with respect to each loan on the schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan; the amount of principal and interest received during the reporting year; the unpaid balance; the identity and address of the obligor; a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms); and the amount of principal and interest overdue (if any) and an explanation thereof;

(F) A list of all leases that were in default or were classified during the year as uncollectible, and the following information with respect to each lease on the list (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, if fixed assets such as land, buildings, and leaseholds, then the location of the property); the identity of the lessor or lessee from or to whom the Funds are leasing; the relationship of the lessors and lessees, if any, to the Funds, the government of the District of Columbia, any employee organization, or any other party in interest; the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost; the date the property was leased and its approximate value at that date; the gross rental receipts during the reporting period; expenses paid for the leased property during the reporting period; the net receipts from the lease; the amounts in arrears; and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Funds are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Funds are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Funds are held, and for each separate account or a separate trust, such other information as may be required by the Retirement Board to comply with this subsection; and

(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, for an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold), and a description of each asset to which the transaction applies; the purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan; expenses incurred in connection with the transaction; and the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(3) For purposes of paragraph (2)(H) of this subsection, the term “reportable transaction” means a transaction to which the Funds is a party and which is:

(A) A transaction involving an amount in excess of 5% (or other percentage that may be established from time to time by the United States Department of Labor for “reportable transactions”) of the current value of the assets of the Funds;

(B) Any transaction (other than a transaction respecting a security) that is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of the transactions exceeds 5% (or other percentage that may be established from time to time by the United States Department of Labor for reportable transactions) of the current value of the assets of the Funds;

(C) A transaction that is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of the transactions in the fiscal year exceeds 5% (or other percentage that may be established from time to time by the United States Department of Labor for reportable transactions) of the current value of the assets of the Funds; or

(D) A transaction with, or in conjunction with, a person respecting a security, if any other transaction with or in conjunction with the person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A) of this paragraph. (Sept. 18, 1998, D.C. Law 12-152, § 116, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

Subchapter III. Establishment of Replacement Retirement and Disability Benefits Plans.

§ 1-783.1. Replacement program for covered District employees.

The replacement plan governing retirement and disability for service and benefits accrued after June 30, 1997, for covered District employees shall be the retirement program in effect for covered District employees as of June 30, 1997. (Sept. 18, 1998, D.C. Law 12-152, § 121, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-783.2. Eligibility and benefits determinations.

Eligibility and the calculation of the amount of the benefit payment for covered District employees for service accrued after June 30, 1997, shall be determined in accordance with the retirement program applicable to covered District employees in effect as of June 30, 1997 (except as otherwise amended by Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 963)). (Sept. 18, 1998, D.C. Law 12-152, § 122, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-783.3. Tax treatment of plan.

The replacement plan described in § 1-783.2 shall be deemed a “governmental plan” as defined in § 414(d) of the Internal Revenue Code of 1954, approved September 2, 1974 (88 Stat. 926; 26 U.S.C. § 414(d)), and all benefits provided therefrom shall be deemed governmental plan benefits maintained by the District of Columbia. (Sept. 18, 1998, D.C. Law 12-152, § 123, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

Subchapter IV. Financing of Retirement Benefits.

§ 1-784.1. Limitation on investment of retirement funds.

(a) The assets of the Funds shall not be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(2) Obligations fully guaranteed as to the payment of both principal and interest by the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(3) Real property in the District of Columbia, Virginia, or Maryland; or

(4) Loans, mortgages, bonds, notes, bills, or certificates of indebtedness secured, in whole or in part, by real property in the District of Columbia, Virginia, or Maryland.

(b)(1) Any assets of the Funds invested after March 16, 1993, in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the work place and while traveling to and from work;

(C) Banning provocative religious or political emblems from the work place;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from under-represented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(3)(A) On or before the 1st day of October of each year, the Mayor shall determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which funds are or will be invested (in conformance with the MacBride Principles as enumerated in paragraph (2) of this subsection), and provide an annual report of his findings for presentation to the Council, which report shall be made available for public inspection.

(B) In making the determination pursuant to subparagraph (A) of this paragraph, the Mayor may rely on reference sources, such as the Investor Responsibility Research Center, in making a determination with respect to the affirmative action taken by the institutions and companies. (Sept. 18, 1998, D.C. Law 12-152, § 131, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-784.2. District of Columbia payment to the Funds.

(a) Each fiscal year, the District shall insure that a sufficient amount is appropriated for each separate fund comprising the Funds, as the District of Columbia payment to the appropriate separate fund comprising the Funds, which shall be equal to, or greater than, the amount calculated as provided for in § 1-784.3, as determined by the enrolled actuary, engaged pursuant to § 1-784.3(a).

(b) The amount appropriated as the District of Columbia payment shall be deposited in the appropriate separate fund comprising the Funds not more than 30 days after it is appropriated or 30 days after the beginning of the fiscal year for which it is appropriated, whichever is later.

(c) At the end of each fiscal year, the District shall provide to the enrolled actuary the actual aggregate amount of earnable compensation ("covered

payroll”) paid to each participant group covered by the Retirement Program. The enrolled actuary shall determine whether the amount appropriated for the applicable fiscal year resulted in an overpayment or a shortfall based upon the actual covered payroll.

(1) If a shortfall exists, the Mayor and the Council shall include within the ensuing budget cycle a line item that requests funding equal to the full amount of shortfall for the appropriate separate fund comprising the Funds.

(2) If an overpayment exists, the Mayor and the Council shall include within the ensuing budget cycle a line item that requests a reduction in the amount appropriated as the District of Columbia payment to the Funds equal to the full amount of the overpayment.

(3) Overpayments or shortfall reductions shall be made in addition to, and notwithstanding, any other payment required herein.

(d) If at any time the balance of any separate fund comprising the Funds is not sufficient to meet all obligations against the Funds, the Funds shall have claims on the revenues of the District of Columbia to the extent necessary to meet the obligation. (Sept. 18, 1998, D.C. Law 12-152, § 132, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-784.3. Calculation of District of Columbia payment to the Funds.

(a)(1) The Retirement Board shall engage an enrolled actuary who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), who shall, in accordance with generally accepted actuarial principles and practices, make the following determinations with respect to each separate fund comprising the Funds:

(A) When specified in paragraph (2) of this subsection, the actuary shall determine the level percentage of covered payroll, expressed as a percentage (hereinafter in this chapter referred to as the “normal contribution rate”), which shall be the percentage which if paid annually into the Funds from the date of the actuarial determination until the date of death, retirement, or other withdrawal from employment for all participants covered by the retirement program and added to (i) all future employee contributions to the Funds, (ii) the assets in the Funds, and (iii) projected future investment earnings of the Funds, are projected to be sufficient to pay for the future benefits payable from the Funds to that group. If deemed appropriate by the Retirement Board, separate normal contribution rates may be determined for different classifications of employees.

(B) When specified in paragraph (2) of this subsection, the enrolled actuary shall determine the current value of the assets in the Funds as of the actuarial determination date.

(C) The actuary shall also determine such additional information as the Retirement Board may require to make the determinations specified in paragraph (4) of this subsection and in subsection (b) of this section.

(2) Unless the actuary engaged by the Retirement Board pursuant to paragraph (1) of this subsection determines that a more frequent valuation is necessary to support the actuary's opinion, the actuary shall make the determinations described in paragraph (1)(A) and (B) of this subsection:

- (A) Not later than 60 days after September 18, 1998; and
- (B) Upon a request by the Retirement Board; or
- (C) At least once every 2 years.

(3) On the basis of the most recent determinations made under paragraph (1) of this subsection, the enrolled actuary shall certify to the Retirement Board each year, at a time specified by the Retirement Board, the following information with respect to each separate fund comprising the Funds for the next fiscal year:

- (A) The normal contribution rate;
- (B) The present value of future benefits payable from the Funds for covered employees as of the valuation date;
- (C) The current value of assets in the Funds as of the actuarial determination date; and
- (D) The value of assets, as determined by the actuary, for use in development of the normal contribution rate.

(4) On the basis of the most recent certification submitted by the enrolled actuary under paragraph (3) of this subsection, the Retirement Board shall certify the normal contribution rate applicable for the next fiscal year for each separate fund comprising the Funds.

(b)(1) On the basis of the most recent determinations made under subsection (a)(4) of this section, the Retirement Board shall, not less than 30 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council, pursuant to § 47-301, certify to the Mayor and the Council the normal contribution rate for each separate fund comprising the Funds.

(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to § 47-301, and the Council, in adopting each annual budget in accordance with § 47-304 shall, for each separate fund comprising the Funds, include in the budget not less than the product of: (A) the normal contribution rate certified by the Retirement Board under paragraph (1) of this subsection; and (B) an estimate of the applicable payroll, as determined by the Mayor, as the estimate of the District payment for the next fiscal year. The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Retirement Board.

(c) Prior to the enactment of any law producing any change in benefits under the Retirement Program, the Mayor shall engage, and pay for, an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), to estimate the effect of that change in benefits over the next 5 fiscal years on:

- (1) The normal contribution rate; and
- (2) The estimated level of District payments.

(d) The Mayor shall transmit the estimates of the actuary to the Retirement Board, the Secretary of the Treasury, and the Council, and during a control

year, as defined in § 47-393(4), to the District of Columbia Financial Responsibility and Management Assistance Authority. In no event may such change in benefits go into effect until the end of the 30-day period beginning on the date the transmittals required herein have been completed. (Sept. 18, 1998, D.C. Law 12-152, § 133, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-784.4. Actuarial statement and opinion.

(a) As a part of the actuarial report presented to the Retirement Board, the actuary shall prepare an actuarial statement. The statement shall contain:

(1) The dates of the fiscal year and the most recent actuarial valuation;

(2) The total amount of the contributions made by participants and the total amount of all other contributions, including the District payment, received for the fiscal year and for each preceding fiscal year for which the information was not previously reported;

(3) The number of participants, whether or not retired, and beneficiaries receiving benefits covered as of the last day of the fiscal year;

(4) The following information as of the date of the most recent actuarial valuation and, if available and sufficiently comparable so as not to be misleading, for at least the 2 preceding actuarial valuations:

(A) The aggregate annual compensation of participants;

(B) The actuarial value of assets of each separate fund comprising the Funds;

(C) The actuarial accrued liability, if applicable;

(D) The difference between the actuarial value of assets of the system and actuarial accrued liability, if applicable;

(E) The actuarial value of assets of the system expressed as a percentage of actuarial accrued liability, if applicable;

(F) The difference between the actuarial liability expressed as a percentage of the aggregate annual compensation of participants, if applicable; and

(G) The actuarial assumptions and methods used in determining the information described in this paragraph and other factors that significantly affect the information described in this paragraph; and

(5) Other information necessary to disclose fully and fairly the actuarial condition of the retirement plans.

(b)(1) The actuarial report shall also contain an opinion of the enrolled actuary on the actuarial statement attesting that:

(A) To the best of the actuary's knowledge the statement is complete and accurate;

(B) Each assumption and method used in preparing the statement is reasonable, and the assumptions and methods in the aggregate are reasonable, taking into account the experience of the retirement system; and

(C) The assumptions and methods in combination offer the actuary's best estimate of anticipated experience.

(2) In formulating an opinion, the actuary may rely on the correctness of any accounting matter as to which any qualified public accountant has expressed an opinion, if the actuary so indicates.

(c) The actuarial statement and opinion required herein shall be included as part of the annual report required pursuant to § 1-785.2. (Sept. 18, 1998, D.C. Law 12-152, § 134, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-784.5. Information about retirement programs.

Upon a request of the Retirement Board, the Mayor shall furnish to the Retirement Board information with respect to retirement programs to which this chapter applies as the Retirement Board considers necessary to enable it to carry out its responsibilities under this chapter and to enable the enrolled actuary engaged pursuant to § 1-784.3(a) to carry out the responsibilities of the enrolled actuary under this chapter. (Sept. 18, 1998, D.C. Law 12-152, § 135, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

Subchapter V. Reporting and Disclosure Requirements; Bonding.

§ 1-785.1. Personal financial disclosure by the Retirement Board.

(a)(1) Effective October 1, 1997, each member of the Retirement Board shall, within 90 days of his election or appointment, as the case may be, and not later than April 30th of each year thereafter, submit, as a member of the Retirement Board, to the Mayor and the Council a personal financial disclosure statement with respect to the preceding calendar year.

(2) The statement shall be in such form as the Council may require and shall contain information with respect to the member's financial condition as the Council may require, including the following information:

(A) The amount and source of all income (as defined in § 61 of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat 17; 26 U.S.C. § 61)) received during the year;

(B) The identity and category of value of each liability owned, directly or indirectly, that exceeds \$2,500 as of the last day of the year (excluding any mortgage that secures real property that is the principal residence of the member);

(C) The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income that has a fair market value of not less than \$1,000 as of the last day of the year;

(D) The identity and category of value of any transaction, whether direct or indirect, in securities or commodities futures during the year in excess of \$1,000 (excluding any gift to any tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)), and the identity, date, and category of value of any purchase or sale, whether direct or indirect, of any interest in real or tangible personal property during the year the value of which exceeds \$1,000 at the time of the purchase or sale (excluding any purchase or sale of any property that is the principal residence of the member or that is used as furnishings for the principal residence);

(E) The nature and extent of any interest during the year in any bank, insurance company, or other financial institution, or in any brokerage or other securities or investment company; and

(F) The nature and extent of any employment during the year by any bank, insurance company, or other financial institution, or by any brokerage or other securities or investment company.

(b) For purposes of subsection (a)(2)(B), (C), and (D) of this section, the member reporting need not specify the actual amount or value of each item required to be reported under that subsection, but shall indicate which of the following categories the amount or value is within:

- (1) Not more than \$5,000;
- (2) Greater than \$5,000, but not more than \$15,000;
- (3) Greater than \$15,000, but not more than \$50,000;
- (4) Greater than \$50,000, but not more than \$100,000; or
- (5) Greater than \$100,000.

(c) Consistent with § 1-785.5, the information required by this section shall be public information. (Sept. 18, 1998, D.C. Law 12-152, § 141, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

§ 1-785.2. Annual report.

(a) The Retirement Board shall publish an annual report for each fiscal year with respect to each retirement program and separate fund comprising the Funds to which this chapter applies. The report shall be filed with the Mayor and the Council in accordance with subsection (c) of this section and shall be made available and furnished to participants and beneficiaries in accordance with § 1-785.4(c).

(b) The annual report shall include the following information:

- (1) The name and business address of each Retirement Board member;
- (2) The name and business address of the agent for service of process;
- (3) The name and business address of each fiduciary;
- (4) The name of each person or entity (including any consultant, broker, trustee, accountant, insurance carrier, actuary, investment counsel, or custodial trustee), who received compensation from the Retirement Board during the preceding year for services rendered to the Retirement Board or the participants or beneficiaries of the retirement program for which a separate

fund comprising the Funds was established, the amount of the compensation, the nature of the services, the relationship of the person or entity, if any, to the District of Columbia government or employee organization, and any other office, position, or employment the person or entity holds with any party in interest;

(5) The description of each of the retirement plans and the number of employees covered by the retirement plans, including any significant change in the retirement program made during the period and the impact of the change on benefits;

(6) The current statement of investment objectives and policies, which shall include:

(A) The desired rates of return on assets overall;

(B) The desired rates of return and acceptable levels of risk for each asset class;

(C) Asset allocation goals;

(D) Guidelines for the delegation of authority to investment managers; and

(E) Information on the benchmarks used to evaluate investment performance;

(7) Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;

(8) An opinion on the financial statements by the qualified public accountant, engaged pursuant to § 1-784.3, in conformity with generally accepted auditing standards;

(9) The actuarial statement and opinion required by § 1-784.4;

(10) A description of any material interest, held by any trustee, or employee who is a fiduciary with respect to the investment management of assets of the Funds, or by a related person, in any material transaction with the system within the last 3 years;

(11) A schedule of the rates of return, net of total investment expense, on assets of the system overall and on assets aggregated by category over the most recent 1-year, 3-year, 5-year, and 10-year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the system overall and for each category over each period; and

(12) A schedule of the sum of total investment expenses and total general administrative expense for the fiscal year expressed as a percentage of the fair market value of assets of the Funds on the last day of the fiscal year.

(c) The annual report shall be filed with the Mayor and the Council within 210 days after the end of the fiscal year for which it is prepared. (Sept. 18, 1998, D.C. Law 12-152, § 142, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.3. Summary plan description.

(a)(1) A summary plan description of the Retirement Program, for service and benefits accrued after June 30, 1997, shall be furnished to participants

and beneficiaries, pursuant to § 1-785.4(b). The summary plan description shall include the information specified in subsection (b) of this section, shall be written in a manner calculated to be understood by the average participant or beneficiary, and shall be sufficiently accurate and comprehensive to reasonably apprise the participants and beneficiaries of their rights and obligations under the Retirement Program.

(2) A summary of any material modification in the terms of the retirement program benefits accrued after June 30, 1997, and any change in the information required under subsection (b) of this section, written in a manner calculated to be understood by the average participant or beneficiary, shall be furnished in accordance with § 1-785.4(b).

(b) Each summary plan description of an individual retirement program shall contain the following information:

(1) The name of the individual retirement program and system and type of administration of the individual retirement program;

(2) The name and address of the Chairman of the Retirement Board, who shall be the agent of the Retirement Board for the service of legal process;

(3) The name, title, and business address of each member of the Retirement Board;

(4) A description of the relevant provisions of applicable collective-bargaining agreements;

(5) Citations to the governing laws of the retirement program;

(6) The individual retirement program's requirements respecting eligibility for participation and benefits;

(7) A description of benefits provided by the program, including the manner of calculating benefits and any benefits provided for spouses and survivors;

(8) The source of financing of the program;

(9) A description of the provisions providing for nonforfeitable pension benefits;

(10) Circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;

(11) The identity of any organization through which benefits are provided;

(12) The procedures to be followed in presenting claims for benefits under the retirement program;

(13) The remedies available under the retirement program for the redress of claims that are denied in whole or in part; and

(14) The location of the Retirement Board's offices and the function of the Retirement Board.

(c) Copies of the summary plan descriptions shall be provided to the Mayor, the Council, and the employee organizations representing employees covered by the retirement plans.

(d) Summary plan descriptions for service and benefits accrued prior to July 1, 1997, are under the jurisdiction and control of the United States Secretary of the Treasury pursuant to the Retirement Protection Act. (Sept. 18, 1998, D.C. Law 12-152, § 143, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.4. Reports and disclosure to participants and beneficiaries.

(a) The Retirement Board shall furnish the Mayor and the Council, upon request, any documents relating to the retirement program or the Funds, including trust agreements, contracts, or other instruments under which the Funds are operated.

(b) A copy of the summary plan description and all modifications and changes referred to in § 1-785.3(a) shall be provided to a participant within 90 days after he becomes a participant, or to a beneficiary within 90 days after he first receives benefits. The Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, every 5th year an updated summary plan description described in § 1-785.3 that integrates all Retirement Program amendments made within the 5-year period, except where no amendments have been made to a retirement program during the 5-year period, this sentence shall not apply. Notwithstanding the foregoing sentence, the Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, the summary plan description described in § 1-785.3 every 10th year. If there is a modification or change described in § 1-785.3(a), a summary plan description of the modification or change shall be furnished to each participant and to each beneficiary who is receiving benefits under the Retirement Program not later than 210 days after the end of the fiscal year in which the change is adopted.

(c) Within 210 days after the close of the fiscal year, the Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, a statement that fairly summarizes the annual report. The statement shall contain a disclosure of the financial and actuarial status of the applicable retirement plan.

(d) The Board shall permit any accountant or actuary retained by the Mayor or the Council to inspect whatever books and records of the Funds as are necessary to conduct the District's annual audit, or if the Mayor or the Council rejects the annual report or the summary plan description upon a finding that the document is incomplete for purposes of this chapter, or upon a determination that there is any material qualification by an accountant or actuary contained in an opinion submitted as part of the annual report.

(e) The Council may require that the Retirement Board furnish to each participant and to each beneficiary receiving benefits under an individual retirement program a statement of the rights of participants and beneficiaries under this chapter. (Sept. 18, 1998, D.C. Law 12-152, § 144, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.5. Disclosure to the public.

(a) The Retirement Board and the Mayor shall make copies of the summary plan descriptions and annual reports available for public inspection in an appropriate location.

(b) The Retirement Board shall make reasonably available to participants for public examination in the Retirement Board's Office, and in other places if necessary, the following information:

- (1) The governing law of the retirement program;
- (2) Summary descriptions of modifications or changes that have been provided to participants and beneficiaries but not yet integrated into the summary plan description;
- (3) The most recent annual disclosure of financial and actuarial status; and
- (4) The most recent annual report.

(c) Upon written request by a participant, beneficiary, or member of the public, copies of any publication described in subsection (b) of this section shall be provided. A reasonable fee to cover the cost of providing copies may be charged. Copies shall be provided within 30 days after receiving payment.

(d) Information described in § 1-785.6(a) with respect to a participant or beneficiary of a retirement program may be disclosed only to the extent that information respecting that participant's or beneficiary's benefits under Title II of the Social Security Act, approved August 14, 1935 (49 Stat. 622; 42 U.S.C. § 401 et seq.), may be disclosed under that act.

(e) All meetings of the Retirement Board shall be open to the public, except to the extent that information discussed in any meeting relates to personnel matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or the deliberations or tentative or final decisions on investments or other financial matter would jeopardize the ability of the Retirement Board to implement an investment decision or to achieve investment objectives.

(f) A record of the disclosed deliberations that may occur pursuant to subsection (e) of this section, or a tentative or final decision on investments or other financial matter, shall not be a public record pursuant to subchapter II of Chapter 15 of this title, to the extent its disclosure would jeopardize the ability to implement a decision or to achieve investment objectives. (Sept. 18, 1998, D.C. Law 12-152, § 145, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

§ 1-785.6. Reporting of participants' benefit rights.

(a) The Retirement Board shall furnish to any participant or beneficiary who so requests in writing a statement indicating, on the basis of the latest available information:

- (1) The total benefits accrued; and
- (2) The nonforfeitable retirement benefits, if any, that have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) A participant or beneficiary shall not be entitled to receive more than one report under subsection (a) of this section during any 12-month period. (Sept. 18, 1998, D.C. Law 12-152, § 146, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.7. Retention of records.

The Retirement Board shall maintain records on the matters required to be disclosed under subchapter IV of this chapter, which shall provide in sufficient detail the necessary basic information and data from which the required documents may be verified, explained, or clarified, and checked for accuracy and completeness. These records shall include minutes of the meetings of the Retirement Board, vouchers, worksheets, receipts, and applicable resolutions. The Retirement Board shall keep the records available for examination for a period of not less than 6 years after the filing date of the documents based on the information which they contain. Except to the extent that the records involve matters protected from public disclosure under § 1-785.5, all records shall be available for inspection by the public. (Sept. 18, 1998, D.C. Law 12-152, § 147, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.8. Criminal penalties.

Whoever willfully violates any provision of any section of subchapter IV of this chapter (other than section 136), or any regulation or order issued under those provisions, shall be fined not more than \$5,000, or imprisoned not more than one year, or both, except that for a violation by a person not an individual, the person shall be fined not more than \$100,000. (Sept. 18, 1998, D.C. Law 12-152, § 148, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

References in text. — “Section 136,” referred to in this section, refers to § 136 of D.C. Law 12-152.

Application of Law 12-152. — See note to § 1-781.1.

§ 1-785.9. Bonding.

(a)(1)(A) Each fiduciary of a separate fund comprising the Funds established by this chapter and each person who handles funds or other property of the Funds (“Funds Official”) shall be bonded as provided in this section, except that no bond shall be required of a fiduciary (or of any director, officer, or employee of the fiduciary) if the fiduciary:

(i) Is a corporation organized and doing business under the laws of the United States or of any state;

(ii) Is authorized under those laws to exercise trust powers or to conduct an insurance business;

(iii) Is subject to supervision or examination by federal or state authority; and

(iv) Has at all times a combined capital and surplus in excess of a minimum amount as may be established by regulations issued by the Council, which amount shall be at least \$1,000,000.

(B) Subparagraph (A)(iv) of this paragraph shall apply to a bank or other financial institution that is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation only if the bank or institution meets bonding or similar requirements under state law that the Retirement Board determines are at least equivalent to those imposed on banks by federal law.

(2)(A) The amount of the bond shall be the lesser of 10% of the amount of the funds handled by the fiduciary and \$500,000, except that the amount of the bond shall be at least \$1,000.

(B) The Retirement Board, after notice and opportunity for hearing to the fiduciary and all other parties in interest to the Funds, may waive the \$500,000 additional requirement.

(C) The amount of the bond shall be set at the beginning of each fiscal year.

(3) For purposes of fixing the amount of the bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by the bond and by the predecessor or predecessors, if any, during the preceding reporting year, or if the Funds have no preceding reporting year under this chapter, the amount of funds to be handled during the current reporting year by person, group, or class, estimated as provided in regulations to be prescribed by the Retirement Board.

(4) The bond shall provide protection to the Funds against loss by reason of acts of fraud or dishonesty by the Fund Official, directly or through connivance with others.

(5) Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted by the Secretary of the Treasury. Any bond shall be in a form or of a type approved by the Retirement Board, including individual bonds or schedule or blanket forms of bonds that cover a group or class.

(b) It shall be unlawful for any Funds official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any fund without being bonded as required by subsection (a) of this section, and it shall be unlawful for any Funds Official or any other person having authority to direct the performance of those functions or to permit the functions, or any of them, to be performed by any Funds Official with respect to whom the requirements of subsection (a) of this section have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations the Funds or any party in interest in the Funds has any control or significant financial interest, direct or indirect.

(d) A person who is required to be bonded under subsection (a) of this subsection because he handles property of a separate fund comprising the

Funds, shall not be required to obtain additional bonding with regard to the Funds.

(e) The Retirement Board may prescribe such regulations, which shall be subject to Council review, as may be necessary to carry out the provisions of this section. (Sept. 18, 1998, D.C. Law 12-152, § 149, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1.

Application of Law 12-152. — See note to § 1-781.1.

Subchapter VI. Miscellaneous.

§ 1-786.1. Civil enforcement.

(a) A civil action may be brought:

(1) By a participant or beneficiary:

(A) For the relief provided for in subsection (b) of this section; or

(B) To recover benefits due to him under the terms of his retirement program, to enforce his rights under the terms of the retirement program, or to clarify his rights to future benefits under the terms of the Retirement Program;

(2) By a participant or beneficiary, the District of Columbia, or the Retirement Board for appropriate relief under § 1-742; or

(3) By a participant or beneficiary, the District of Columbia, and the Retirement Board:

(A) To enjoin any act or practice that violates any provision of this chapter or the terms of the Retirement Program; or

(B) To obtain other appropriate equitable relief:

(i) To redress any violation; or

(ii) To enforce any provision of this chapter or the terms of an individual retirement program.

(b) If the Retirement Board fails or refuses to comply with a request for any information that the Retirement Board is required by this chapter to furnish to a participant or beneficiary (unless the failure or refusal results from matters reasonably beyond the control of the Board) by mailing the information requested to the last known address of the requesting participant or beneficiary within 30 days after the request, then the Retirement Board may, in the court's discretion, be liable to the participant or beneficiary in an amount of up to \$100 a day from the date of the failure or refusal, and the court may order the Retirement Board to provide the required information and may in its discretion order other relief as it considers proper.

(c) The Retirement Board may sue and be sued under this chapter as an entity. Service of summons, subpoena, or other legal process of a court upon the Chairman of the Retirement Board in that capacity shall constitute service upon the Retirement Board.

(d) In any action under this chapter by a participant, beneficiary, fiduciary, or the Retirement Board, the court in its discretion, may grant reasonable attorneys fees and costs of action to either party. (Sept. 18, 1998, D.C. Law 12-152, § 201, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

§ 1-786.2. Limitations on actions.

For fraud or concealment, an action may be commenced under this chapter not later than 6 years after the date of discovery of a breach or violation. Otherwise, no action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this chapter, or with respect to a violation of this chapter, after the earlier of:

(1) Six years after:

(A) The date of the last action that constituted a part of the breach or violation; or

(B) For an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(2) Three years after the earliest date:

(A) On which the plaintiff had actual knowledge of the breach or violation; or

(B) On which a report from which he could reasonably be expected to have obtained knowledge of the breach or violation was filed with the Mayor or the Council. (Sept. 18, 1998, D.C. Law 12-152, § 202, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

§ 1-786.3. Alienation of benefits.

Benefits of the retirement programs provided for herein shall not be assigned or alienated, except to the extent expressly permitted by this chapter or by another applicable law. (Sept. 18, 1998, D.C. Law 12-152, § 203, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

§ 1-786.4. Effect on other laws.

(a) The provisions of this chapter supersede any provisions of other law which are inconsistent with this chapter and the regulations thereunder.

(b) Nothing in this chapter shall be deemed to alter or amend in any way the provisions of existing laws relating to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division. (Sept. 18, 1998, D.C. Law 12-152, § 204, 45 DCR 4045.)

Legislative history of Law 12-152. — See note to § 1-781.1. **Application of Law 12-152.** — See note to § 1-781.1.

CHAPTER 8. NOTARIES PUBLIC.

Sec.

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§ 1-801. Appointment; representation of clients before government departments; license fee; rules.

(a) The Mayor of the District of Columbia shall have power to appoint such number of notaries public, residents of said District, or whose sole place of business or employment is located within said District, as, in his discretion, the business of the District may require: Provided, that the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the departments of the United States government in the District of Columbia or elsewhere: Provided further, that such person so appointed as a notary public who appears to practice or represent clients before any such department is not otherwise engaged in government employ, and shall be admitted by the heads of such departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: And provided further, that no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before any of the departments aforesaid.

(b) Each notary public before obtaining his commission, and for each renewal thereof, shall pay to the Director of the Department of Finance and Revenue of the District of Columbia a license fee of \$30: Provided, that no license fee shall be collected from any notary public in the service of the United States government or the District of Columbia government whose notarial duties are confined solely to government official business: And provided further, that no notary fee shall be collected at any time by a notary public who is exempted from the payment of the license fee. The Mayor is hereby authorized to refund, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of any fee erroneously paid or collected under this section.

(c) The Council of the District of Columbia shall issue rules necessary to carry out the provisions of §§ 1-801 to 1-815: Except, that the Mayor of the

District of Columbia shall amend by rule from time to time the amount of any fee established pursuant to §§ 1-801 to 1-815. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 558; June 29, 1906, 34 Stat. 622, ch. 3616; Feb. 10, 1925, 43 Stat. 821, ch. 198; Dec. 16, 1944, 58 Stat. 810, ch. 597, § 1; 1973 Ed., § 1-501; June 22, 1983, D.C. Law 5-14, § 304, 30 DCR 2632.)

Uniform Law on Notarial Acts. — See § 45-621 et seq.

Section references. — This section is referred to in § 47-2853.4.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

New implementing regulations. — Section 302 of D.C. Law 5-14 also amended the Notaries Public Regulation (Reg. 73-13; 25 DCRR 3).

Mayor authorized to issue rules. — Section 1102 of D.C. Law 5-14 provided that the Mayor shall issue rules necessary to carry out the provisions of the act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(20) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers,

employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Inapplicability to matters before Department of Interior. — Section 3 of The Act of June 3, 1948, 62 Stat. 301, ch. 392, provided that the last proviso of subsection (a) of this section shall not apply to matters before the Department of the Interior.

Cited in Halls Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D.C. 498 (1908); **Roberts v. International Bank,** 25 F.2d 214 (D.C. Cir. 1928); **Dankman v. District of Columbia Bd. of Elections & Ethics,** App. D.C., 443 A.2d 507 (1981).

§ 1-802. Term of office.

Said notaries public shall hold their offices for the period of 5 years, removable at discretion. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559; 1973 Ed., § 1-502.)

Section references. — This section is referred to in § 1-801.

§ 1-803. Oath; bond.

Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the District of Columbia in the sum of \$2,000, with security, to be approved by the Mayor of the District of Columbia or his designated agent, for the faithful discharge of the duties of his office. Where any such notary public is an officer or employee of the government of the District of Columbia whose notarial duties are confined solely to government official business, any bond covering such officer or employee for the faithful performance of such notarial duties obtained by the Mayor of the District of Columbia pursuant to the authority conferred on him by law shall be in lieu of the bond required by the 1st sentence of this section. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 561; June 25, 1936, 49 Stat. 1921, ch. 804; Dec. 16, 1944, 58 Stat. 811, ch. 597, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 7, 1955, 69 Stat. 281, ch. 280, § 5; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 1; 1973 Ed., § 1-504.)

Cross references. — As to oath prescribed for civil officers, see § 1-501.

Section references. — This section is referred to in §§ 1-801 and 1-817.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-804. Seal.

Each notary public shall provide a notarial seal with which he shall authenticate all his official acts. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 562; 1973 Ed., § 1-505.)

Section references. — This section is referred to in § 1-801.

§ 1-805. Filing of signature; depositing impression of seal; certification as to authenticity.

Each notary public shall file his signature and deposit an impression of his official seal with the Mayor of the District of Columbia or his designated agent, and the Mayor or his designated agent may certify to the authenticity of the signature and official seal of the notary public. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 563; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 2; 1973 Ed., § 1-506.)

Section references. — This section is referred to in § 1-801.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-806. Exemption from execution.

A notary's official seal and his official documents shall be exempt from execution. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 564; 1973 Ed., § 1-507.)

Section references. — This section is referred to in §§ 1-801 and 1-817.

§ 1-807. Foreign bills of exchange.

Notaries public shall have authority to demand acceptance and payment of foreign bills of exchange and to protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages notaries public may do. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 565; 1973 Ed., § 1-508.)

Section references. — This section is referred to in § 1-801.

§ 1-808. Inland bills of exchange; promissory notes and checks.

Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to

the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of \$10 to the District of Columbia, to be collected in the Superior Court of the District of Columbia as are other fines and penalties. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 567; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 1-509.)

Section references. — This section is referred to in § 1-801.

§ 1-809. Other acts for use and effect beyond District.

Notaries public may also perform such other acts, for use and effect beyond the jurisdiction of the District, as according to the law of any state or territory of the United States or any foreign government in amity with the United States may be performed by notaries public. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 566; 1973 Ed., § 1-510.)

Section references. — This section is referred to in § 1-801.

§ 1-810. Certification of certain instruments; depositions; administration of oaths and affirmations; affidavits.

Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 568; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 1-511; Oct. 1, 1976, D.C. Law 1-87, § 2, 23 DCR 2544.)

Section references. — This section is referred to in §§ 1-801 and 1-811.

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Com-

mittee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

§ 1-811. Record of official acts; certified copies.

Each notary public shall keep a fair record of all his official acts, except such as are mentioned in § 1-810, and when required, shall give a certified copy of any record in his office to any person upon payment of the fees therefor. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 569; 1973 Ed., § 1-512.)

Section references. — This section is referred to in § 1-801.

§ 1-812. Copy of record as evidence.

The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts in like manner as the original protest. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 570; 1973 Ed., § 1-513.)

Section references. — This section is referred to in § 1-801.

§ 1-813. Fees.

(a) The Mayor of the District of Columbia shall adjust from time to time the schedule of fees to be charged by notaries public. The Mayor shall adjust the schedule by rule to provide fees in amounts which, in the Mayor's judgment, will defray the notary public's necessary expenses in connection with performing his services.

(b) Until the schedule of fees is adjusted by the Mayor in accordance with subsection (a) of this section, the schedule of fees in subsection (c) of this section will be in effect.

(c) The fees of notaries public shall be:

(1) For taking an acknowledgement of proof of a deed or other instrument including the seal and writing of the certificate, \$2 for each signature;

(2) For administering an oath or for taking an affidavit, including the jurat and seal, \$2; or

(3) For any other notarial act, \$2. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 571; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 1-514; Mar. 8, 1984, D.C. Law 5-52, § 2, 30 DCR 5931.)

Section references. — This section is referred to in §§ 1-801 and 1-814.

Legislative history of Law 5-52. — Law 5-52 was introduced in Council and assigned Bill No. 5-222, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on October 4, 1983 and October 18, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-78 and transmitted to both Houses of Congress for its review.

§ 1-814. Penalties for taking higher fees.

Any notary public who shall take a higher fee than is prescribed by § 1-813 shall pay a fine of \$100 and be removed from office by the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 572; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 3; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a); 1973 Ed., § 1-515.)

Section references. — This section is referred to in § 1-801.

§ 1-815. Custody of records and official papers upon death, resignation, and removal from office.

Upon the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the Office of the Mayor of the District of Columbia or his designated agent. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 573; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 4; 1973 Ed., § 1-516.)

Section references. — This section is referred to in § 1-801.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-816. Certificates issued by Mayor.

Certificates issued by the Mayor of the District of Columbia may be signed by the Executive Secretary. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 4; 1973 Ed., § 1-517.)

Office of the Secretary established. — See Mayor's Order 83-21, January 3, 1983.

Amendment of functions and duties of the Secretary. — See Mayor's Order 84-51, February 29, 1984.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Secretary to Board of Commissioners abolished. — The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners by Reorganization Plan No. 5 of 1952. Reorganization Order No. 41 of the Board of Commissioners, dated June 23, 1953, issued pursuant to that Plan, established as part of the Executive Office of the Board of Commissioners, under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The Order described the purpose and functions of the Office of Secretary and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new office, and that the previously existing Office of the Secretary be abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 2 of the Commissioner, dated December 13, 1967, as amended, established within the Executive Office of the Commissioner a Secretariat headed by an Executive Secretary. The Order transferred to the Secre-

tariat certain functions, including the duties, powers and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it

existed immediately prior to December 13, 1967, and revoked all other orders inconsistent therewith.

§ 1-817. Authorization for appropriation; inclusion of expenses in Mayor's annual estimates.

Appropriation is hereby authorized to be made to carry out the provisions of this section and §§ 1-803 and 1-806, and the Mayor of the District of Columbia is authorized to include in his annual estimates provision for all expenses incident to such purposes, including the purchase of equipment and supplies and the payment of salaries to personnel. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 5; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 1-518; Mar. 3, 1979, D.C. Law 2-139, § 3205(c), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 9. SURVEYOR. ¹

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| <p>Sec.</p> <p>1-901. Salary; appointment; term of office.</p> <p>1-902. Oath.</p> <p>1-903. Appointment of Assistant Surveyor and other employees.</p> <p>1-904. Duties of Assistant Surveyor.</p> <p>1-905. Surveyor's office to be legal office of record of plats and subdivisions.</p> <p>1-906. Records, papers, and instruments to be kept and preserved by Surveyor.</p> <p>1-907. Records of divisions of squares and lots.</p> <p>1-908. Records deemed property of District; transfer of records upon vacancy in office.</p> <p>1-909. Typewritten records authorized.</p> <p>1-910. Scale of plats.</p> <p>1-911. Transcripts as evidence.</p> <p>1-912. Subdivision of United States squares.</p> <p>1-913. Orders regulating platting and subdividing; admission of plats and subdivisions to record.</p> <p>1-914. Public ways.</p> <p>1-915. Right-of-way through cemeteries.</p> | <p>Sec.</p> <p>1-916. Surveys for District.</p> <p>1-917. Order of survey to be speedily executed.</p> <p>1-918. Alteration of boundaries; change of surveys.</p> <p>1-919. Boundaries of lots to be marked.</p> <p>1-920. Subdivision plat; certification.</p> <p>1-921. Examination of subdivision dimensions; recording of subdivision.</p> <p>1-922. Reference to subdivisions.</p> <p>1-923. Regulation of alleys.</p> <p>1-924. Deficiency or excess in measurement of square.</p> <p>1-925. Party walls.</p> <p>1-926. Wall extending over lot line.</p> <p>1-927. Surveyor to certify and record location of party wall.</p> <p>1-928. Adjusting lines of buildings; certificate as evidence.</p> <p>1-929. Mayor to revise fees for Surveyor; notice of revision of fee schedule; inspection of fee schedule; employment of registered land surveyor.</p> |
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§ 1-901. Salary; appointment; term of office.

The Surveyor of the District of Columbia shall receive a salary in lieu of fees, and shall be appointed by the Mayor of the District of Columbia for a term of 4 years, unless sooner removed for cause, and shall be under the direction and control of the said Mayor. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1577; 1973 Ed., § 1-601.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

History of Office of Surveyor. — The Office of the Surveyor was abolished and the

functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 27 of the Board of Commissioners, dated April 3, 1953, abolished the previous existing Office of the Surveyor including the office of the head thereof, and established the Office of the Surveyor headed by a Surveyor, under the direction and control of the Engineer Commissioner. All positions under the previous Office of Surveyor were transferred to the new Office with certain named exceptions. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. There was established within the District of Columbia Department of Transportation the Office of Surveyor by Reorganization Plan No. 2 of 1982, effective December 8, 1982. The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Agreement between surveyor and land-

owner, not approved by Mayor, unenforceable against District. — Correspondence between landowner and surveyor of District did not constitute an enforceable contract for sale of alley to landowner at \$65.00 per square foot since surveyor was not delegated the authority to enter into contracts on behalf of the District

or to establish fair market value of the District's property, nor would the alleged contract for more than \$3,000 be binding since it was not approved by the Mayor. *District of Columbia v. McGregor Properties, Inc.*, App. D.C., 479 A.2d 1270 (1984).

§ 1-902. Oath.

The Surveyor shall take and subscribe an oath or affirmation before the Mayor that he will faithfully and impartially discharge the duties of his office, which oath shall be deposited with the Mayor of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1578; June 28, 1935, 49 Stat. 431, ch. 332, § 2; 1973 Ed., § 1-602.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Act Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-903. Appointment of Assistant Surveyor and other employees.

The Mayor of the District of Columbia, on the recommendation of the Surveyor, is hereby authorized to appoint 1 Assistant Surveyor, and such employees as may in the judgment of the Mayor of the District of Columbia be required for the Surveyor's office and operation. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1579; 1973 Ed., § 1-603.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-904. Duties of Assistant Surveyor.

The Assistant Surveyor shall take the same oath his principal is required to take, and may, during the continuance of his office, discharge and perform any

of the official duties of his principal. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1592; June 28, 1935, 49 Stat. 431, ch. 332, § 3; 1973 Ed., § 1-604.)

§ 1-905. Surveyor's office to be legal office of record of plats and subdivisions.

The Office of the Surveyor of the District shall be the legal office of record of the plats and subdivisions of all private property in the District of Columbia and of all property belonging to the District of Columbia. The copies of all records of the division of squares and lots made between the public and the original proprietors and all plats, papers, books, maps, and records now in the Office of the Surveyor shall remain therein. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1574; June 30, 1902, 32 Stat. 544, ch. 1329; 1973 Ed., § 1-605.)

Principal purpose of filing plat. in the Office of the Surveyor is to establish areas and boundaries of lots in the subdivision. *Case v. Morrisette*, 475 F.2d 1300 (D.C. Cir. 1973).

Failure to record plat. — Where the plat was never recorded in the Surveyor's office, there was no dedication to the District of Co-

lumbia of the property shown as streets. *Faulks v. Schrider*, 99 F.2d 370 (D.C. Cir. 1938).

Equitable servitudes can be created by inscriptions on subdivision plats filed with surveyor, but they also may be created by deeds, with or without plats attached. *Case v. Morrisette*, 475 F.2d 1300 (D.C. Cir. 1973).

§ 1-906. Records, papers, and instruments to be kept and preserved by Surveyor.

The Surveyor shall keep his office in a room designated by the Mayor for the purpose, and shall not be engaged in the transaction of any business appertaining to any other office or appointment which may be held by him, and shall in his said office preserve and keep all such maps, charts, surveys, books, records, and papers relating to the District of Columbia, or to any of the avenues, streets, alleys, public spaces, squares, lots, and buildings thereon, or any of them, as shall for the purpose of being deposited in his office come into his hands or possession; and shall, in books provided or to be provided for that purpose, keep a true record of every survey, certificate, or account which shall be made, issued, or prepared by him, and also shall preserve and keep in good order and repair the instruments in his said office belonging to the District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1599; 1973 Ed., § 1-606.)

Cross references. — As to recordation of permanent highway plans, see §§ 7-108 and 7-125.

As to recordation of plats for burial grounds, see §§ 27-103 and 27-116.

As to designation of land in District by square and lot number, see §§ 47-701 and 47-705.

As to duty to furnish Assessor transcript of conveyances of real estate, see § 47-707.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to appropriate changes in terminology were made § 714(a) of such Act (D.C. Code, § 1-213(a)), in this section.

§ 1-907. Records of divisions of squares and lots.

All records, or copies thereof, of the divisions of squares and lots heretofore made between the public and the original proprietors, or which are authorized by this chapter, shall be kept in the Office of the Surveyor of the District of Columbia, and the Surveyor shall put up, label, index, and preserve all the maps, charts, plats, plans, and other drawings and papers relating to the District of Columbia or which appertain to his office, and which may come to his office for deposit, record, or otherwise. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1596; 1973 Ed., § 1-607.)

§ 1-908. Records deemed property of District; transfer of records upon vacancy in office.

All papers, plats, books, maps, and records of his office shall be deemed the property of the District of Columbia, and shall constitute a part of the public records; and in all cases of vacancy in the office, by resignation or otherwise, they shall be transferred to his successor in office. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1600; June 30, 1902, 32 Stat. 545, ch. 1329; 1973 Ed., § 1-608.)

§ 1-909. Typewritten records authorized.

After May 18, 1910, the recording of all instruments filed for record in the Office of the Surveyor of the District of Columbia may be done with book typewriters. (May 18, 1910, 36 Stat. 382, ch. 248; 1973 Ed., § 1-609.)

§ 1-910. Scale of plats.

The plats and squares and subdivisions of the City of Washington shall be drawn upon a uniform scale of not less than 1 inch to 50 feet, and shall show the lines of all subdivisions of the squares as the same existed at the date of the completion of each square. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1580; 1973 Ed., § 1-610.)

§ 1-911. Transcripts as evidence.

All transcripts from such records certified by the Surveyor shall be prima facie evidence thereof. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1575; 1973 Ed., § 1-611.)

§ 1-912. Subdivision of United States squares.

Whenever the President shall deem it necessary to subdivide any square or lot belonging to the United States within the City of Washington, not reserved for public purposes, into convenient building lots or portions for sale and occupancy, and alleys for their accommodation, he may cause a plat to be made

by the Surveyor in the manner prescribed in this chapter, which plat shall be recorded by the Surveyor; and the provisions of this chapter shall extend to the lots, pieces, and parcels of ground contained in such plat as fully as to subdivisions made by individual proprietors. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1594; 1973 Ed., § 1-612.)

§ 1-913. Orders regulating platting and subdividing; admission of plats and subdivisions to record.

The Council of the District of Columbia is authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia under the jurisdiction of the Mayor; and no such plat or subdivision made in pursuance of such orders shall be admitted to record in the Office of the Surveyor of said District without an order to that effect indorsed thereon by the Mayor of said District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1601; 1973 Ed., § 1-613.)

Cross references. — As to recordation of permanent highway plans, see §§ 7-108 and 7-125.

Section references. — This section is referred to in §§ 1-914 and 1-921.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(21) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-914. Public ways.

All spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with § 1-913. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1602; 1973 Ed., § 1-614.)

§ 1-915. Right-of-way through cemeteries.

If by the extension of any of the present streets or avenues or the opening of any public way it becomes necessary to traverse any grounds now used as a cemetery or place of burial, the Mayor is empowered to secure a right-of-way through the same by stipulation with the proprietors thereof. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1603; 1973 Ed., § 1-615.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-916. Surveys for District.

Except as specifically provided for elsewhere in this chapter with respect to surveying work authorized to be performed by a registered land surveyor, it shall be the duty of the Surveyor to execute any surveying work for the District of Columbia without charge, on the order of the Mayor; and all fees for surveys made by the Surveyor or the Assistant Surveyor shall be paid over to the Collector of Taxes of the District of Columbia under regulations to be prescribed by the Mayor of the District of Columbia, and be covered into the Treasury of the United States as other revenues of the District are now; and the field notes of the Surveyor and his Assistant shall be preserved and shall be a part of the public property of the District of Columbia, and all records, plats, plans, and other papers or documents now existing, or hereafter made or secured by the Office of the said Surveyor, shall be delivered by each Surveyor to his successor in office, and no plat or survey of land shall be recorded in the Office of the Surveyor of the District of Columbia except it be certified to as correct by the Surveyor of said District, or a registered land surveyor. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1591; 1973 Ed., § 1-616; Apr. 20, 1999, D.C. Law 12-261, § 5005(a), 46 DCR 3142.)

Cross references. — As to fee schedule for services rendered by Surveyor, see § 1-929.

As to disposition of fees, see § 47-127.

Effect of amendments. — D.C. Law 12-261 added “Except as specifically provided for elsewhere in this chapter with respect to surveying work authorized to be performed by a registered land surveyor” to the beginning of the section, and added “or a registered land surveyor” to the end of the section.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization

Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization

Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

§ 1-917. Order of survey to be speedily executed.

The Surveyor shall, as speedily as possible, execute any order of survey made by any court or private individual of any lot or square within the City of Washington, or of any land within the District of Columbia outside of said City, and shall make due return of a true plat and certificate thereof. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1590; 1973 Ed., § 1-617.)

§ 1-918. Alteration of boundaries; change of surveys.

Whenever the proprietor of any tract or parcel of land in the District of Columbia shall desire or deem it necessary to subdivide or alter boundaries, or change the surveys of any such tract or parcel of land, such subdivision, alteration, or change shall be by the Surveyor of the District of Columbia, or his Assistant, only, and shall be entered in the plat book or books of said Surveyor. All such subdivisions, alterations, or changes shall be certified by the Surveyor, the party wishing such plat, and 2 competent witnesses, whose names shall be appended thereto. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1595; 1973 Ed., § 1-618.)

Cited in American Univ. Park Citizens Ass'n v. Burka, App. D.C., 400 A.2d 737 (1979).

§ 1-919. Boundaries of lots to be marked.

The Surveyor shall, or a registered land surveyor may, on the request of the proprietor or proprietors of any square, lot, or piece of ground within the District of Columbia, set out and mark the proper lines, and furnish to him, her, or them a certificate describing the dimensions and boundaries of the same, according to the plan. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1598; 1973 Ed., § 1-619; Apr. 20, 1999, D.C. Law 12-261, § 5005(b), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 substituted "The Surveyor shall, or a registered land surveyor may" for "It shall also be the duty of the Surveyor" at the beginning of the section.

Legislative history of Law 12-261. — See note to § 1-916.

§ 1-920. Subdivision plat; certification.

Whenever the proprietor of any square or lot shall deem it necessary to subdivide the same into convenient building lots or portions for sale and occupancy and alleys for their accommodation, he may cause a plat to be made by the Surveyor or a registered land surveyor, on which shall be expressed the dimensions and length of all the lines of such portions as are necessary for defining and laying off the same on the ground, and may certify such subdivision under his hand and seal, in the presence of 2 or more credible witnesses, upon the same plat or on a paper or parchment attached thereto. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1581; 1973 Ed., § 1-620; Apr. 20, 1999, D.C. Law 12-261, § 5005(c), 46 DCR 3142.)

Cross references. — As to adoption of maps of highway plans, see § 7-109.

Section references. — This section is referred to in §§ 1-921 and 45-1709.

Effect of amendments. — D.C. Law 12-261 substituted “Surveyor or a registered land surveyor” for “Surveyor.”

Legislative history of Law 12-261. — See note to § 1-916.

Cited in American Univ. Park Citizens Ass’n v. Burka, App. D.C., 400 A.2d 737 (1979).

§ 1-921. Examination of subdivision dimensions; recording of subdivision.

At the request of the proprietor the Surveyor shall examine whether the lots or parcels into which any square or lot may be subdivided as provided in § 1-920 agree in dimensions with the whole of the square or lot so intended to be subdivided, and whether the dimensions expressed on the plat of subdivision be the true dimensions of the parts so expressed; and whether said lots or parcels conform to the general orders of the Council of the District of Columbia made under existing law or under authority of § 1-913; and if upon such examination he shall find the plat correct he shall certify the same under his hand and seal to the Mayor with such remarks as appear to him necessary; but no such plat or subdivision shall be admitted to record in the Office of the Surveyor without an order to that effect, indorsed thereon by said Mayor. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1582; June 30, 1902, 32 Stat. 544, ch. 1329; 1973 Ed., § 1-621.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-922. Reference to subdivisions.

When a subdivision of any square or lot shall be so certified, examined, and recorded, the purchaser of any part thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Mayor and original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1583; 1973 Ed., § 1-622.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-923. Regulation of alleys.

The ways, alleys, or passages laid out or expressed on any plat of subdivision shall be and remain at all times under the same police regulations as the alleys laid off by the Mayor on division with the original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1584; June 30, 1902, 32 Stat. 544, ch. 1329; 1973 Ed., § 1-623.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-924. Deficiency or excess in measurement of square.

Whenever the Surveyor or registered land surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, the Surveyor or a registered land surveyor shall measure the whole of that front of the square on which said lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, the Surveyor or a registered land surveyor shall, except in that portion of the City of Washington included within the limits of what formerly constituted the City of Georgetown, apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions; and in that portion of the City of Washington included within the limits of what

formerly constituted the City of Georgetown the Surveyor or a registered land surveyor shall allow such excess or charge such deficiency to the highest numbered original lot on that front of the square, or apportion such excess or deficiency among any lots into which such highest numbered original lot may have been subdivided: provided, that wherever in the former City of Georgetown a square or block of land is intersected by the division line between 2 original additions to said City, the excess or deficiency found between the street lines and said division line shall be applied to the highest numbered original lot on each side of said division line, or apportioned among any lots into which such highest numbered original lot may have been subdivided. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1585; June 30, 1902, 32 Stat. 544, ch. 1329; 1973 Ed., § 1-624; Apr. 20, 1999, D.C. Law 12-261, § 5005(d), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 substituted “Whenever the Surveyor or registered surveyor shall lay” for “Whenever the Surveyor shall lay” at the beginning of the section, and substituted “the Surveyor or a

registered land surveyor” for “he” throughout the section.

Legislative history of Law 12-261. — See note to § 1-916.

§ 1-925. Party walls.

Whenever, on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person in part less than 7 inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1586; 1973 Ed., § 1-625.)

Section references. — This section is referred to in § 1-926.

Establishment of party wall. — There are but 2 lawful ways in which a party wall can be established: (1) By contract between the owners of the adjoining properties; or (2) by force of statute. *Fowler v. Koehler*, 43 App. D.C. 349, 1916E Ann. Cas. 1161 (1915).

Mutual easement established. — The erection of a party wall by 1 of 2 adjoining owners does not amount to a taking of property for private use, but amounts only to the establishment of a mutual easement or servitude. *Fowler v. Koehler*, 43 App. D.C. 349, 1916E Ann. Cas. 1161 (1915); *Perry v. Reeve*, 12 F.2d 184 (D.C. Cir. 1926).

Contribution to cost of wall. — A landowner making use of a party wall erected by the adjoining owner is required to contribute his fair proportion of the cost thereof to the person erecting the wall, or his successor in interest, even though the wall was not erected under an agreement to contribute. *Fowler v. Koehler*, 43 App. D.C. 349, 1916E Ann. Cas. 1161 (1915).

The purchaser of a lot with a party wall on it,

in which the adjoining owner has not exercised his right, succeeds to the rights of the builder, and is entitled to compensation when such wall is used by the adjoining owner. *Walker v. Gish*, 273 F. 366 (D.C. Cir. 1921), *aff'd*, 260 U.S. 447, 43 S. Ct. 174, 67 L. Ed. 344 (1923).

Building regulations relating to party walls. — The building regulations of the District of Columbia with respect to party walls are neither statutes nor ordinances; they are mere rules for the enforcement of existing rights, and have no force outside the limits of the City of Washington as they existed at the time the regulations were promulgated. *Fowler v. Koehler*, 43 App. D.C. 349, 1916E Ann. Cas. 1161 (1915).

The regulations governing party walls in force in the original federal city have been made applicable by custom to the territory of the City of Washington outside the original city, except where the property owner objected at the time to an attempted construction of a party wall and took measures to prevent it. *Walker v. Gish*, 260 U.S. 447, 43 S. Ct. 174, 67 L. Ed. 344 (1923).

Wall held to be a party wall. — See *Smoot v. Heyl*, 227 U.S. 518, 33 S. Ct. 336, 57 L. Ed. 621 (1913).
Krupsaw v. Welch, 34 F. Supp. 396 (D.D.C. 1940).

Cited in *Johnson v. Simmons*, 290 F. 331 (D.C. Cir. 1923).

Wall held not to be a party wall. — See

§ 1-926. Wall extending over lot line.

If the wall of any house already erected cover 7 inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than 7 inches in width shall be paid for as provided in § 1-925. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1587; 1973 Ed., § 1-626.)

Section references. — This section is referred to in § 1-927.

§ 1-927. Surveyor to certify and record location of party wall.

The Surveyor or a registered surveyor shall ascertain and certify, and the Surveyor may put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party wall, as mentioned in § 1-926. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1588; 1973 Ed., § 1-627; Apr. 20, 1999, D.C. Law 12-261, § 5005(e), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 substituted “The Surveyor or a registered land surveyor shall ascertain and certify, and the Surveyor may put on record” for “The Surveyor

shall ascertain and certify and put on record” at the beginning of the section.

Legislative history of Law 12-261. — See note to § 1-916.

§ 1-928. Adjusting lines of buildings; certificate as evidence.

It shall be the duty of the Surveyor or registered land surveyor to attend and examine the foundation or walls of any house to be erected for the purpose of adjusting the line of the front of such building to the line of the street and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate of the fact shall be admitted as evidence and binding on the parties interested. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1589; June 30, 1902, 32 Stat. 545, ch. 1329; 1973 Ed., § 1-628; Apr. 20, 1999, D.C. Law 12-261, § 5005(f), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 substituted “Surveyor or registered land surveyor” for “Surveyor.”

Legislative history of Law 12-261. — See note to § 1-916.

§ 1-929. Mayor to revise fees for Surveyor; notice of revision of fee schedule; inspection of fee schedule; employment of registered land surveyor.

(a) The Mayor of the District of Columbia is hereby authorized to revise, as necessary, the schedule of fees to be charged for services rendered by the

Surveyor of the District of Columbia. Such fees shall be established by the Mayor in such amounts as, in his judgment, will be commensurate with the cost to the District of Columbia for providing the services rendered by the Office of the Surveyor. Notice of any revision of the schedule of fees shall be published in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), and in addition shall be filed with the Council of the District of Columbia at least 30 days prior to their effective date. The schedule of fees established by the Mayor shall be available for inspection in the Office of the Surveyor.

(b) Any person may request in writing that the Surveyor perform any survey or prepare any plat authorized by this chapter. The Surveyor may complete and may record any survey within 60 days after a written request for survey is filed. Except for those surveying or other functions, duties or obligations specifically reserved to the Surveyor in this chapter, any person may employ, at his expense, a registered land surveyor to perform any survey or prepare any plat authorized by this chapter. Such registered land surveyor employed pursuant to this subsection shall perform the survey under the direction of and in accordance with procedures established by the Surveyor. This subsection shall not apply to any department or agency of the government of the District of Columbia.

(c) For the purposes of this section, a “registered land surveyor” shall mean any person or firm licensed under the provisions of subchapter I-B of Chapter 28 of Title 47 approved and permitted by the Office of the Surveyor to prepare and certify surveys and subdivision plats in the District of Columbia, including, but not limited to, registered civil engineers. The Surveyor is authorized to establish and enforce standards and operating procedures for the performance of surveys by registered land surveyors under subsection (b) of this section. The Surveyor is further authorized to establish and maintain a list of approved registered land surveyors who may be utilized by applicants for surveys pursuant to subsection (b) of this section.

(d) The Mayor is authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this section, including rules to authorize the use of private land surveyors to perform surveys or prepare plats. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1593; 1973 Ed., § 1-629; Mar. 3, 1979, D.C. Law 2-149, § 2, 25 DCR 7035; Apr. 20, 1999, D.C. Law 12-261, § 5005(g), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 rewrote (b); in (c), inserted “licensed under the provisions of the Non-Health Related Occupations and Professions Licensure Act of 1998”; and, in (d), added “including rules to authorize the use of private land surveyors to perform surveys or prepare plats” to the end of the section.

Legislative history of Law 2-149. — Law 2-149 was introduced in Council and assigned

Bill No. 2-372, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-338 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — See note to § 1-916.

CHAPTER 10. INSPECTIONS.

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| <p>Sec.</p> <p>1-1001. Citation of §§ 1-1001 to 1-1018.</p> <p>1-1002. "Person" defined.</p> <p>1-1003. Boiler Inspection Service created; appointment, qualifications, and duties of Boiler Inspector.</p> <p>1-1004. Bond and oath of Inspector.</p> <p>1-1005. Certificate of inspection required.</p> <p>1-1006. Operation prohibited.</p> <p>1-1007. Annual inspection; issuance, contents and display of certificate of inspection; inspection by insurance company.</p> <p>1-1008. Revocation or suspension of certificate.</p> <p>1-1009. Exemptions.</p> <p>1-1010. Inspection fees; cessation of insurance invalidates certificate of inspection.</p> <p>1-1011. Right of entry for inspection.</p> <p>1-1012. Records.</p> <p>1-1013. Use deemed nuisance; proceedings to abate.</p> <p>1-1014. Filing information; penalties; separate offenses.</p> <p>1-1015. Authorization to make regulations and fix fees.</p> | <p>Sec.</p> <p>1-1016. Repeal of inconsistent provisions; exception.</p> <p>1-1017. Severability.</p> <p>1-1018. Effective date; publication and enforcement of regulations and fees.</p> <p>1-1019. Regulation of electricity; examination fees; exemption of public utilities.</p> <p>1-1020. Electrical Engineer; electrical inspectors.</p> <p>1-1021. Assistant Electrical Engineer.</p> <p>1-1022. Appointment of Inspector of Plumbing; duty.</p> <p>1-1023. Regulation of plumbing; licensing of plumbers and gas-fitters; noncompliance.</p> <p>1-1024. Plumbing permit fees; disposition of fees collected.</p> <p>1-1025. Powers of Inspector of Plumbing.</p> <p>1-1026. Duties of Assistant Inspector of Buildings.</p> <p>1-1027. Inspector of Elevators and Fire Escapes.</p> <p>1-1028. Notice of attempted residential service.</p> |
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§ 1-1001. Citation of §§ 1-1001 to 1-1018.

Sections 1-1001 to 1-1018 may be cited as the "Boiler Inspection Act of the District of Columbia." (June 25, 1936, 49 Stat. 1917, ch. 802, § 1; 1973 Ed., § 1-701.)

Cross references. — As to Inspector of Asphalts and Cements, see § 1-341.

As to inspection of unsafe structures, see § 5-601.

As to inspection of insanitary buildings, see § 5-701.

As to inspection of manufacture, renovation, and sale of mattresses, see § 6-807.

As to inspection of plants for control of plant diseases and insect infections, see § 6-1104.

As to criminal penalty for impersonating an

inspector of a department of the District government, see § 22-1305.

As to inspection of institutions of charity supported by public funds, see §§ 32-1201 and 32-1202.

As to inspection of gas and electric meters, see § 43-1003.

Section references. — This section is referred to in §§ 1-1002, 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

§ 1-1002. "Person" defined.

Wherever the word "person" is used in §§ 1-1001 to 1-1018 it shall include individuals, firms, partnerships, associations, and corporations. (June 25, 1936, 49 Stat. 1917, ch. 802, § 2; 1973 Ed., § 1-702.)

Section references. — This section is referred to in §§ 1-1001, 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

§ 1-1003. Boiler Inspection Service created; appointment, qualifications, and duties of Boiler Inspector.

There is hereby constituted a Boiler Inspection Service in the Department of Licenses, Investigation and Inspections of the District of Columbia, to be composed of the following: (1) A Boiler Inspector who shall be qualified by training and experience in the construction and operation of steam boilers and unfired pressure vessels, and who, under an official designated by the Mayor of the District of Columbia, shall have charge of the enforcement of the provisions of §§ 1-1001 to 1-1018 and of the regulations promulgated hereunder; and (2) such other employees as may be necessary for the proper performance of the work. All such officials and employees shall be appointed by the Mayor of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 3; 1973 Ed., § 1-703.)

Section references. — This section is referred to in §§ 1-1001, 1-1002, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Inspections abolished. — The Department of Inspections was abolished and the function thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization,

and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

§ 1-1004. Bond and oath of Inspector.

The said Inspector shall give bond, with 2 sufficient securities, to be approved by the Mayor, in the sum of \$2,000, and he shall take and subscribe the following oath or affirmation before a notary public or a judge of the Superior Court of the District of Columbia: "I do solemnly swear that I will diligently, faithfully, and impartially execute the duties of my office without favor." (Leg. Assem., June 25, 1873, ch. 25, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 1-704.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1005. Certificate of inspection required.

No person shall use or cause to be used any steam boiler operating at a pressure in excess of 15 pounds per square inch, or operating at a pressure less than 15 pounds per square inch unless provided with an unassisted gravity return, or any unfired pressure vessel operating at a pressure in excess of 60 pounds per square inch and having a capacity in excess of 15 gallons, except such vessels as may be exempted by the Council of the District of Columbia, without having first obtained a certificate of inspection from the Boiler Inspector. (June 25, 1936, 49 Stat. 1917, ch. 802, § 4; 1973 Ed., § 1-705.)

Cross references. — As to revocations of certificates, see § 1-1008.

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1006 to 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(23) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1006. Operation prohibited.

No person shall operate or cause to be operated any boiler or unfired pressure vessel, referred to in § 1-1005, at a pressure greater than that permitted by the certificate of inspection, or while feed pumps, gauges, cocks, valves, or automatic safety-control devices are not in proper working condition, or in violation of any of the regulations promulgated hereunder by the Council of the District of Columbia. (June 25, 1936, 49 Stat. 1918, ch. 802, § 5; 1973 Ed., § 1-706.)

Cross references. — As to vessels exempted, see §§ 1-1005 and 1-1009.

As to power of Council to make regulations, see § 1-1015.

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1007. Annual inspection; issuance, contents and display of certificate of inspection; inspection by insurance company.

The Boiler Inspector, or one of his assistants, shall inspect annually all boilers and unfired pressure vessels for which a certificate of inspection is required by § 1-1005 and shall determine by actual tests the condition thereof from the standpoint of safety and fitness for operation. If such boiler or vessel be safe and fit for operation, the Boiler Inspector shall issue the certificate of inspection which shall state, among other things, the pressure per square inch such boiler or vessel may be allowed to carry. This certificate of inspection shall be displayed in a conspicuous place in close proximity to the boiler or vessel covered thereby. In the case of a steam boiler or unfired pressure vessel which is regularly insured and inspected at least once a year by an insurance company duly licensed in the District of Columbia and approved by the Mayor of the said District as to its inspection service where a report of such inspection filed within 30 days after such inspection with the Boiler Inspector shows any such boiler or unfired pressure vessel to be in a safe and insurable condition, such inspection and report shall take the place of the inspection hereinbefore provided and the certificate of inspection may be issued upon such report. Insurance companies shall report to the inspectors the cancelation of insurance of any certificate holder. (June 25, 1936, 49 Stat. 1918, ch. 802, § 6; 1973 Ed., § 1-707.)

Cross references. — As to revocation of certificates, see § 1-1008.

As to inspection fees, see §§ 1-1010, 1-1015 and 1-1018.

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1008. Revocation or suspension of certificate.

The Boiler Inspector may in his discretion revoke or suspend the certificate of inspection provided in § 1-1005 if at any time he shall find any boiler or unfired pressure vessel covered by such certificate to be unsafe or unfit for operation. (June 25, 1936, 49 Stat. 1918, ch. 802, § 7; 1973 Ed., § 1-708.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

§ 1-1009. Exemptions.

Steam boilers and unfired pressure vessels located in or upon boats or vessels or other floating equipment, or boats or vessels owned or operated by the United States, or upon locomotives, street cars, busses, or other vehicles, operated under the regulations of any federal agency or the Public Service Commission of the District of Columbia, shall be exempt from the provisions of §§ 1-1001 to 1-1018. (June 25, 1936, 49 Stat. 1918, ch. 802, § 8; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 1-709.)

Cross references. — As to exemptions granted by Council, see § 1-1005. referred to in §§ 1-1001 to 1-1003, 1-1010, and 1-1013 to 1-1018.

Section references. — This section is re-

§ 1-1010. Inspection fees; cessation of insurance invalidates certificate of inspection.

There shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia by the owner or user, for the issuance of a certificate as required by §§ 1-1001 to 1-1018, fees to be fixed from time to time by the Mayor of the District of Columbia for the annual inspection of each steam boiler or unfired pressure vessel, commensurate with the cost of inspection, with power to fix higher fees for the issuance of a certificate where the inspection in connection therewith is made on a Sunday or legal holiday. When an inspection report is filed by an insurance company with the said Boiler Inspector showing that a boiler or unfired pressure vessel has been inspected and found to be in a safe and insurable condition as provided in § 1-1007, the owner or user of such insured and inspected boiler or unfired

vessels shall be exempt from the payment of all fees with the exception that there shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia a fee of \$1 by the owner or user prior to the issuance of a certificate of inspection. No such certificate shall be valid after the boiler or unfired pressure vessel shall cease to be insured by an insurance company authorized as provided in § 1-1007. (June 25, 1936, 49 Stat. 1918, ch. 802, § 9; 1973 Ed., § 1-710.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization

Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121, was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

§ 1-1011. Right of entry for inspection.

The Boiler Inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such Inspector or assistant or to interfere with him or them in the performance of his or their duties. (June 25, 1936, 49 Stat. 1919, ch. 802, § 10; 1973 Ed., § 1-711.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

§ 1-1012. Records.

The Boiler Inspector shall keep in the office of the Boiler Inspection Service all applications made, and a complete record thereof, as well as of all certificates issued. He shall also keep a complete record of each boiler and unfired pressure vessel inspected, and such other records and data pertaining to the Boiler Inspection Service as may be directed by the Mayor of the District of Columbia. (June 25, 1936, 49 Stat. 1919, ch. 802, § 11; 1973 Ed., § 1-712.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1013. Use deemed nuisance; proceedings to abate.

The use of any steam boiler or unfired pressure vessel in violation of any of the prohibitions or requirements of §§ 1-1001 to 1-1018, or of the regulations promulgated under the authority hereof, shall constitute a common nuisance and the Corporation Counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. (June 25, 1936, 49 Stat. 1919, ch. 802, § 12; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(2); 1973 Ed., § 1-713.)

Cross references. — As to power of Council to make regulations, see § 1-1015.

ferred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1014 to 1-1018.

Section references. — This section is re-

§ 1-1014. Filing information; penalties; separate offenses.

If any person shall violate any one or more of the provisions of §§ 1-1001 to 1-1018 or of regulations duly promulgated hereunder, the Corporation Counsel of the District of Columbia, or any of his assistants, shall file an information in the Superior Court of the District of Columbia in the name of the District of Columbia, and upon conviction such persons shall be subject to a fine not to exceed \$100 or to imprisonment for not more than 90 days, or both, for each and every violation thereof, and each violation shall constitute a separate

offense. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of §§ 1-1001 to 1-1018, or any rules or regulations issued under the authority of §§ 1-1001 to 1-1018, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of §§ 1-1001 to 1-1018 shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 25, 1936, 49 Stat. 1919, ch. 802, § 13; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 1-714; Oct. 5, 1985, D.C. Law 6-42, § 454, 32 DCR 4450.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, 1-1013, and 1-1015 to 1-1018.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Com-

mittee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 1-1015. Authorization to make regulations and fix fees.

The Council of the District of Columbia is hereby authorized and empowered to make such regulations as it may deem proper to carry out the provisions of §§ 1-1001 to 1-1018 and the Mayor of the District of Columbia is hereby authorized and empowered to fix the fees herein provided. (June 25, 1936, 49 Stat. 1919, ch. 802, § 14; 1973 Ed., § 1-715.)

Cross references. — As to other provisions concerning fees, see §§ 1-1010 and 1-1018.

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1018.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(24) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1016. Repeal of inconsistent provisions; exception.

All laws or parts of laws relating to boiler inspection in conflict with the provisions of §§ 1-1001 to 1-1018 are hereby repealed: Provided, that no provision of §§ 1-1001 to 1-1018 shall be deemed to amend, alter, or repeal §§ 2-2401 to 2-2407. (June 25, 1936, 49 Stat. 1919, ch. 802, § 15; 1973 Ed., § 1-716.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, 1-1013 to 1-1015, 1-1017, and 1-1018.

Editor's notes. — D.C. Law 6-42 added § 2-2408 to the chapter referred to in the text.

§ 1-1017. Severability.

If any provision of §§ 1-1001 to 1-1018 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable. (June 25, 1936, 49 Stat. 1919, ch. 802, § 16; 1973 Ed., § 1-717.)

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, 1-1013 to 1-1016, and 1-1018.

§ 1-1018. Effective date; publication and enforcement of regulations and fees.

Sections 1-1001 to 1-1018 shall become effective 6 months from the date of their approval. The regulations and schedule of fees herein provided for shall be promulgated by the Council of the District of Columbia and the Mayor of the District of Columbia, respectively, and printed in one or more of the daily newspapers published in the said District but shall not be enforced until 30 days after such publication or until December 25, 1936. Amendments to the regulations or new or additional schedules of fees, when and as the same may be adopted, shall likewise be printed in one or more of the daily newspapers published in the said District and no penalty for violation thereof or payment of new or additional fees prescribed shall be enforced until 30 days after such publication. (June 25, 1936, 49 Stat. 1919, ch. 802, § 17; 1973 Ed., § 1-718.)

Cross references. — As to power of Mayor to fix fees, see §§ 1-1010 and 1-1015.

As to power of Council to prescribe regulations, see § 1-1015.

Section references. — This section is referred to in §§ 1-1001 to 1-1003, 1-1009, 1-1010, and 1-1013 to 1-1017.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1019. Regulation of electricity; examination fees; exemption of public utilities.

The Council of the District of Columbia shall have power to make from time to time such rules and regulations respecting the production, use and control of electricity for light, heat, and power purposes in the District of Columbia not inconsistent with existing laws, as in its judgment will afford safety and convenience to the public; and the Council is further authorized and empowered to prescribe such fees for the examination of the electrical wiring,

machinery, and appliances in buildings as it may deem proper, to be paid to the Director of the Department of Finance and Revenue of the District of Columbia, and any such rules and regulations shall after promulgation have the effect and force of law: Provided, that nothing in §§ 1-1019 to 1-1021 contained shall apply to the power plants or buildings of incorporated companies engaged in the production and distribution of electric current for public service or use. (Apr. 26, 1904, 33 Stat. 306, ch. 1602, § 1; 1973 Ed., § 1-719.)

Cross references. — As to rules and regulations in general, see § 1-319.

As to building regulations, see § 5-413.

As to power of Mayor over electric wiring in streets and alleys, see § 43-1401 et seq.

As to disposition of fees, see § 47-127.

As to fee schedule for electrical inspections and permits, see § 47-2712.

Section references. — This section is referred to in § 1-1020.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(25) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers,

employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 1, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Cited in Harris v. Tobriner, 304 F.2d 377 (D.C. Cir. 1962); Belsinger v. District of Columbia, 436 F.2d 214 (D.C. Cir. 1970); Snider v. District of Columbia Bd. of Appeals & Review, App. D.C., 342 A.2d 50 (1975).

§ 1-1020. Electrical Engineer; electrical inspectors.

There is hereby established, under the direction of the Mayor of the District of Columbia, the office of Electrical Engineer, and the Mayor of said District is hereby authorized and directed to appoint an Electrical Engineer, and said Electrical Engineer shall be an expert electrician, possessing a thorough knowledge of the most modern methods for the production, use, and control of

electricity and electrical appliances, construction, wiring, and insulation, as well as such executive ability and adaptability to office work as is requisite for the efficient management of the said office. And the Mayor is authorized and directed to appoint 2 electrical inspectors to assist in the work required by the authority of §§ 1-1019 to 1-1021, who shall perform such clerical duties as may be required by the Mayor. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 3; 1973 Ed., § 1-721.)

Section references. — This section is referred to in § 1-1019.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1021. Assistant Electrical Engineer.

The Assistant Electrical Engineer shall perform the duties of the Electrical Engineer in the absence or disability of the latter and shall have the same qualifications as to ability and technical knowledge as is required by law of the head of the Department. (Mar. 2, 1911, 36 Stat. 981, ch. 192; 1973 Ed., § 1-722.)

Section references. — This section is referred to in §§ 1-1019 and 1-1020.

§ 1-1022. Appointment of Inspector of Plumbing; duty.

There shall be appointed by the Mayor of the District of Columbia an Inspector of Plumbing for said District, whose duty it shall be, to inspect all houses in course of erection, and pass upon the plumbing and sewerage of said houses. (Jan. 25, 1881, 21 Stat. 318, ch. 27; 1973 Ed., § 1-724.)

Cross references. — As to licensing and regulation of plumbers, see Chapter 21 of Title 2.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1023. Regulation of plumbing; licensing of plumbers and gas-fitters; noncompliance.

The Council of the District of Columbia and its successors are authorized and empowered to make and modify, and the Mayor of the District of Columbia and his successors are authorized and empowered to enforce, regulations governing plumbing, house drainage, and the ventilation, preservation, and maintenance in good order of house sewers and public sewers in the District of Columbia, and also regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing and gas-fitting in said District; and any person who shall neglect or refuse to comply with the requirements of the provisions of said regulations after 10 days notice of the specific thing required to be done thereunder, within the time limited by the Mayor for doing such work, or as the said time may be extended by said Mayor, shall upon conviction thereof be punishable by a fine of not more than \$200 for each and every such offense, or in default of payment of fine, to imprisonment not to exceed 30 days. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the regulations pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 1; Mar. 3, 1893, 27 Stat. 543, ch. 199; 1973 Ed., § 1-725; Oct. 5, 1985, D.C. Law 6-42, § 480, 32 DCR 4450.)

Cross references. — As to rules and regulations in general, see § 1-319.

As to the Mayor's power to revoke or suspend licenses, § 2-2105.

As to penalties for violation of plumbers' licensing law, see § 2-2108.

As to building regulations, see § 5-413.

Legislative history of Law 6-42. — See note to § 1-1014.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(26) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Iskovitz v. District of Columbia*, App. D.C., 125 A.2d 519 (1956).

§ 1-1024. Plumbing permit fees; disposition of fees collected.

The Council of the District of Columbia and its successors, be, and they hereby are, authorized to establish, and the Mayor of the District of Columbia and his successors, be, and they hereby are, authorized to charge, a fee for each permit granted to connect any building, premises, or establishment with any sewer, water, or gas main, or other underground structure located in any public street, avenue, alley, road, highway, or space; and also to establish and charge a fee for each permit granted to make an excavation in any public street,

avenue, alley, highway, road, or space for the purpose of repairing, altering, or extending any house sewer, water main, or gas main, or other underground construction. The fees authorized by this section shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia and by him paid for each fiscal year into the Treasury of the United States to the credit of the General Fund of the District of Columbia. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Reorg. Plan No. 3 of 1967, § 402(27), 81 Stat. 952; 1973 Ed., § 1-726.)

Cross references. — As to requirement of making sewer, water, or gas main connections before streets are paved, see § 7-606.

As to fee schedule for public space permits, see § 47-2718.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(27) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers,

employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 1-1025. Powers of Inspector of Plumbing.

The Inspector of Plumbing and his assistants shall be under the direction of said Mayor of the District of Columbia, and they are hereby empowered, accordingly, to inspect or cause to be inspected, all houses when in course of erection in said District, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under

oath of any reputable citizen, to inspect or cause to be inspected any house in said District to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 4; Mar. 3, 1893, 27 Stat. 543, ch. 199; 1973 Ed., § 1-727.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1026. Duties of Assistant Inspector of Buildings.

The principal Assistant Inspector of Buildings may perform and discharge any of the duties of the Inspector of Buildings when so directed by the Mayor of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1046, ch. 422; 1973 Ed., § 1-728.)

Cross references. — As to issuance of building and occupancy permits, see § 5-426.

As to removal of barbed-wire fences, see § 7-803.

As to construction and repair of school buildings, see § 31-202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 1-1027. Inspector of Elevators and Fire Escapes.

One of the Assistant Inspectors of Buildings shall hereafter also perform the duties of Inspector of Elevators and Fire Escapes, without additional compensation. (Aug. 7, 1894, 28 Stat. 244, ch. 232; 1973 Ed., § 1-729.)

Cross references. — As to power of Council to regulate operation and repair of elevators, see § 1-323.

New implementing regulations. — Pur-

suant to this section, the following new regulations were adopted in 1984: The "Apartment House Elevator Act of 1984" (D.C. Law 5-132, Mar. 13, 1985, 32 DCR 1717).

§ 1-1028. Notice of attempted residential service.

(a) Within 90 days after April 11, 1986, the Mayor shall issue rules establishing a system under which agencies of the District of Columbia government which provide the services enumerated in this section to residents of the District of Columbia upon request shall notify the requestor that a service cannot be provided. The rules shall provide for notice pursuant to subsection (b) of this section and for notice to be left, if possible, (1) by being pushed under the internal door on the premises of the requestor, (2) by being pushed through a mail slot in the internal door on the premises of the requestor, or (3) as a last resort, in any manner on the premises of the requestor that offers a reasonable assurance that it will remain there until retrieved by the resident.

(b) The rules shall provide a system under which the following information shall be made available to the residents: The name of the agency, the name of the individual attempting to provide the service, the date and time of the attempt to complete the requested service, the reason the service could not be delivered, and a telephone number that the resident can call to reschedule service.

(c) The services covered by this section shall include bulk trash collection, tree trimming, alley cleaning, leaf collection, inspections for alleged housing code violations, and any other service included in the rules issued pursuant to subsection (a) of this section.

(d) All rules issued pursuant to this section shall be transmitted to the Council for a 45-day review period.

(e) The Council may, by resolution, approve or disapprove the rules, in whole or in part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the regulations before the expiration of the 45-day review period, the regulations shall become effective at the expiration of the 45-day review period. (Apr. 11, 1986, D.C. Law 6-103, § 2, 33 DCR 1157.)

Legislative history of Law 6-103. — Law 6-103, the “District of Columbia Residence Doorknob Notice Act of 1985,” was introduced in Council and assigned Bill No. 6-94, which was referred to the Committee on Government Operations. The Bill was adopted on first and

second readings on January 14, 1986, and January 28, 1986, respectively. Approved without the signature of the Mayor on February 14, 1986, it was assigned Act No. 6-132 and transmitted to both Houses of Congress for its review.

CHAPTER 10A. PRESIDENTIAL INAUGURAL CEREMONIES.

Sec.	Sec.
1-1051. Definitions.	1-1056. Duration of regulations and licenses and publication of regulations.
1-1052. Regulations, licenses, and registration tags.	1-1057. Application to other property.
1-1053. Use of reservations, grounds, and public spaces.	1-1058. Enforcement.
1-1054. Installation and removal of electrical facilities.	1-1059. Penalty.
1-1055. Extension of wires along parade routes.	1-1060. Authorization of appropriations.

§ 1-1051. Definitions.

For purposes of this chapter:

- (1) “Inaugural Committee” means the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony; and
- (2) “Inaugural Period” means the period that includes the day on which the Presidential inaugural ceremony is held, the 5 calendar days immediately preceding that day, and the 4 calendar days immediately following that day. (Aug. 12, 1998, 112 Stat. 1263, Pub. L. 105-225, § 501.)

§ 1-1052. Regulations, licenses, and registration tags.

(a) *Regulations and licenses.* — For each inaugural period, the Council of the District of Columbia shall:

- (1) Prescribe reasonable regulations necessary to preserve public order and protect life, health, and property;
- (2) Prescribe special regulations related to the standing, movement, and operation of vehicles; and
- (3) Grant special licenses to peddlers and vendors to sell merchandise in places the Council considers proper, subject to conditions and fees for the licenses the Council considers proper.

(b) *Registration tags.* — The Mayor of the District of Columbia may issue, for any motor vehicle made available for the use of the Inaugural Committee, special registration tags, valid for not more than 90 days, designed to celebrate the inauguration of the President and Vice President. (Aug. 12, 1998, 112 Stat. 1264, Pub. L. 105-225, § 502.)

§ 1-1053. Use of reservations, grounds, and public spaces.

(a) *Permit for use.* — With the approval of the officer having jurisdiction over any of the federal reservations or grounds in the District of Columbia, the Secretary of the Interior may grant to the Inaugural Committee a permit to use the reservations or grounds during the inaugural period, including a reasonable time before and after the inaugural period. The Mayor of the District of Columbia may grant a similar permit to use public space under the Mayor’s jurisdiction. Each permit granted under this subsection is subject to conditions the grantor of the permit prescribes.

(b) *Reviewing stands and commercial stands and structures.* — A reviewing stand or a stand or structure for the sale of merchandise, food, or drink may be built on public grounds in the District of Columbia only if approved by the Inaugural Committee and by the Secretary or the Mayor, as appropriate.

(c) *Restoration after inaugural period.* — After the inaugural period, the reservation, ground, or public space occupied by a stand or structure shall be restored promptly to its prior condition.

(d) *Indemnification.* — The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate department, agency, or instrumentality of the United States Government against any loss or damage to, and against any liability arising from the use of, the reservation, ground, or public space, by the Inaugural Committee or a licensee of the Inaugural Committee. (Aug. 12, 1998, 112 Stat. 1264, Pub. L. 105-225, § 503.)

§ 1-1054. Installation and removal of electrical facilities.

(a) *Installation.* — The Mayor of the District of Columbia may allow the Inaugural Committee to install suitable overhead conductors and electrical facilities, with adequate supports. The official in charge of a park or reservation in the District of Columbia in which it is necessary to place wires shall supervise the placing and removal of those wires.

(b) *Removal.* — The conductors and supports shall be removed not later than 5 days after the end of the inaugural period.

(c) *Indemnification.* — The United States Government and the District of Columbia may not incur any expense or damage from the installation, operation, or removal of a temporary overhead conductor or electrical facility. The Inaugural Committee shall indemnify and hold harmless the District of Columbia and the appropriate department, agency, or instrumentality of the Government against any loss or damage, and against any liability arising, from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee in connection with the installation, operation, or removal of a temporary overhead conductor or electrical facility. (Aug. 12, 1998, 112 Stat. 1264, Pub. L. 105-225, § 504.)

§ 1-1055. Extension of wires along parade routes.

The Mayor of the District of Columbia, the Secretary of the Interior, and the Inaugural Committee may allow communications companies to extend overhead wires to places along a parade route that are considered convenient for use in connection with the parade and other inaugural purposes. The wires shall be removed not later than 10 days after the inaugural period ends. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 505.)

§ 1-1056. Duration of regulations and licenses and publication of regulations.

Regulations prescribed and licenses authorized under this chapter are effective only during the inaugural period. The regulations shall be published

in at least one daily newspaper published in the District of Columbia. A penalty prescribed for violating such a regulation may not be enforced until 5 days after publication. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 506.)

§ 1-1057. Application to other property.

This chapter does not apply to the United States Capitol Buildings or Grounds or other property under the jurisdiction of Congress or a committee, commission, or officer of Congress. A service or facility authorized by or under this chapter is available for the property on request or approval of the joint committee of the Senate and House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives to arrange for the inauguration of the President-elect and the Vice President-elect. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 507.)

§ 1-1058. Enforcement.

The Mayor of the District of Columbia, or other official having jurisdiction in the premises, shall enforce this chapter, take necessary precautions to protect the public, and ensure that the pavement of any street, sidewalk, avenue, or alley disturbed or damaged is restored to its prior condition. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 508.)

§ 1-1059. Penalty.

A person violating a regulation prescribed under this chapter shall be fined under Title 18 or imprisoned for not more than 30 days. A separate violation occurs under this section for each day the violation continues. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 509.)

References in text. — “Title 18,” referred to in this section, is Title 18 of the U.S. Code.

§ 1-1060. Authorization of appropriations.

(a) *Authorization.* — Necessary amounts are authorized to be appropriated:

(1) To enable the Mayor of the District of Columbia to provide additional municipal services in the District of Columbia during the inaugural period, including:

(A) Employment of personal services without regard to Chapters 33 and 51 and subchapter III of Chapter 58 of Title 5;

(B) Travel expenses of enforcement personnel, including sanitarians, from other jurisdictions;

(C) The hiring of the means of transportation;

(D) Meals for policemen, firemen, and other municipal employees;

(E) The cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and

(F) Other incidental expenses in the discretion of the Mayor; and

(2) To enable the Secretary of the Interior to provide meals for the members of the United States Park Police during the inaugural period.

(b) *Payment.* — Amounts appropriated under:

(1) Subsection (a)(1) of this section are payable in the same way as other appropriations for the expenses of the District of Columbia; and

(2) Subsection (a)(2) of this section are payable in the same way as other appropriations for the expenses of the Department of the Interior. (Aug. 12, 1998, 112 Stat. 1265, Pub. L. 105-225, § 510.)

References in text. — “Chapters 33 and 51 and subchapter III of Chapter 58 of Title 5,” referred to in (a)(1)(A), are references to Title 5 of the U.S. Code.



